Memorandum

BIA 10-01

Subject	Date
CASE HOLD - *Carachuri-Rosendo* issues in the 5th and 7th Circuit	January 6, 2010

To	From
Board Legal Staff	David L. Neal, Acting Chairman

The Supreme Court has granted certiorari in *Carachuri-Rosendo v. Holder*, No. 09-60 (5th Circuit). This case raises the question of whether a second or subsequent state conviction for possession of a controlled substance is an aggravated felony under section 101(a)(43)(B) of the Act, or instead is only an aggravated felony if the State applied a recidivist enhancement in the second or subsequent conviction. The circuits have split on this issue, with the Fifth and Seventh Circuits holding that the second conviction qualifies as an aggravated felony regardless of whether the second state prosecution relied upon the defendant's status as a recidivist. The Board, and other circuits, hold to the contrary. *See Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007); *Matter of Thomas*, 24 I&N Dec. 416 (BIA 2007).

In light of the above, I am directing, pursuant to 8 C.F.R. § 1003.1(e)(8)(iii), that the adjudication time limits be temporarily suspended in individual cases arising in the Fifth and Seventh Circuits which turn on the issue of whether two possession convictions amount to an aggravated felony. If a case can be resolved on other grounds, it should not be put on hold. If you find a case that falls within this hold category, please bring it to the attention of your team leader or Senior Panel Attorney.

Memorandum

BIA 10-02

Subject	Date
Temporary Protected Status - Haiti	January 21, 2010

To	From
Board of Immigration Appeals Legal Staff	David L. Neal, Acting Chairman

The Secretary of Homeland Security has announced that aliens from Haiti may seek Temporary Protected Status (TPS) for a period of 18 months. *See* 75 FR 3476-02 (Jan. 21, 2010). Haitians eligible for TPS may register with the DHS during this period. The Board will administratively close pending removal appeals involving Haitians who appear eligible for TPS. Not all Haitians are eligible for TPS, so please review the record for apparent eligibility before circulating an administrative closure order.

Eligibility requirements for TPS are found in the Federal Register cite listed above, sections 244(a)(1), (c) of the Act, and corresponding regulations. An alien:

- must be a national of Haiti (or an alien with no nationality who last habitually resided in Haiti) who has continuously resided in the United States since January 12, 2010, and has been continually physically present in the United States since January 21, 2010;
- must be admissible as an immigrant, except as provided in section 244(c)(2)(A) (permitting waiver of certain grounds of inadmissibility). *See also* 8 C.F.R. § 1244.3(b), (c). The grounds at section 212(a)(4), (5)(A) and (B), and (7)(A)(i) should not be applied. *See* 8 C.F.R. § 1244.3(a);
- cannot be convicted of any felony or two or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 1244.4(a) (referring to definitions of felony and misdemeanor);
- cannot be one described in section 208(b)(2)(A) of the Act, which includes:
  - the persecutor bar
  - the particularly serious crime bar
  - the serious nonpolitical crime bar
  - the security danger bar
  - the terrorist bar
  - firm resettlement.

If the alien does not appear eligible for TPS, the case may be processed pursuant to normal procedures. Please note on the circulation sheet why there is no apparent eligibility.

When administratively closing a case, use the attached order. The "TPS" and "N"codes should be circled on the back of the circulation sheet. Some types of cases should *not* be administratively closed, e.g., motions to reopen and reconsider; appeals of an IJ denial of a motion; untimely appeals; and detained cases. In these cases, add a footnote advising the alien of TPS where he or she may be eligible. Each Panel may issue its own standard language for this purpose.

Please contact your Team Leader if you have questions. Thank you.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security has designated Haiti under the Temporary Protected Status (TPS) Program. This designation is currently in effect and is scheduled to remain so through July 22, 2011. *See* 75 Fed. Reg. 3476-02 (January 21, 2010). It appears from the record that the alien in the case before us is from Haiti and may be eligible to register for TPS. Additional information about applying for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request **must** be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but with certification of service on the opposing party. If properly submitted, the Board shall reinstate the proceedings.

FOR THE BOARD

Memorandum

BIA 10-03

Subject	Date
CASE HOLD - *Carachuri-Rosendo* issues in the Fifth and Seventh Circuits	June 16, 2010

To	From
Board Legal Staff	David L. Neal, Acting Chairman

As the result of the Supreme Court's decision in *Carachuri-Rosendo v. Holder*, 560 U.S. __ (June 14, 2010), the existing hold (temporary suspension of adjudication time limits) on cases involving *Carachuri-Rosendo* issues in the Fifth and Seventh Circuits is lifted. Cases that were placed in the designated cabinets are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or Team Leader regarding the circulation of cases which are being released from hold.

Memorandum

BIA 10-04

Subject	Date
Case Hold Lifted -Va. Code §§ 18.2-57; 18.2-57.2 - in context of crimes of violence	July 26, 2010

To	From
Board Legal Staff	David L. Neal, Acting Chairman DLN

As the result of the publication of *Matter of Velasquez*, 25 I&N Dec. 278 (BIA 2010), the existing hold (temporary suspension of the adjudication time limits) on cases turning on the issue of whether a conviction under Va. Code §§ 18.2-57 or 18.2-57.2 (general assault and battery; assault and battery against a family or household member) is one "of violence" (e.g, in the context of sections 101(a)(43)(F) or 237(a)(2)(E) of the Act) is lifted. Cases that were placed in the designated cabinets are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or Team Leader regarding the circulation of cases with this issue.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

September 17, 2010

BIA 10-05

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Acting Chairman

SUBJECT: Processing Cases Subject to a Protective Order

This memorandum addresses the processing of cases by Board of Immigration Appeals ("Board") legal staff that involve a protective order. The attached Standard Operating Procedure for Protective Order describes the procedures that the Office of the Chief Clerk will follow when processing these types of cases. The processing procedures contained within this memorandum will usually arise either (1) when a case contains a protective order issued by an Immigration Judge, or (2) an interlocutory appeal has been filed by the Department of Homeland Security (DHS) challenging the Immigration Judge's denial of their motion for issuance of a protective order.

Background. An Immigration Judge has the authority to issue protective orders and seal records in immigration proceedings in order to ensure that sensitive but unclassified information can be protected from general disclosure. *See* 8 C.F.R. § 1003.46. DHS may, at any time after the filing of a charging document, file a motion to protect specific information that it intends to submit or is submitting under seal. The Immigration Judge may issue a protective order barring disclosure of such information upon a showing by DHS of a substantial likelihood that the information, if disclosed, would harm national security or law enforcement interests of the United States. *Id.*

Protective Orders. Unlike classified information, the information subject to the protective order may be reviewed by the respondent and his or her counsel.[1] However, the respondent and counsel are restricted from divulging any information submitted under the protective order or any information derived therefrom, as directed by the Immigration Judge. When it is established by DHS that the respondent or their counsel disclosed information or failed to comply with a protective order, all forms of discretionary relief shall be

[1] The respondent (and counsel) are not entitled to review classified information. The protective order regulation applies only to sensitive law enforcement or national security information which is not classified, but the disclosure of which would nonetheless jeopardize investigations or harm national security. *See* Protective Orders in Immigration Administrative Proceedings, 67 Fed. Reg. 36799 (May 28, 2002).

denied unless the respondent meets certain requirements established in the regulations. *See* 8 C.F.R. § 1003.46(i). Failure to comply may also result in the suspension of respondent's counsel from appearing before EOIR and/or DHS. Also a protective order issued by an Immigration Judge remains in effect until vacated by the judge. The Office of the Chief Immigration Judge has issued a Operating Policies and Procedures Memorandum for Protective Orders and the Sealing of Records in the Immigration Proceedings (OPPM 09-02). That memorandum is available on the EOIR Intranet.

Although information subject to a protective order does not require Board employees to have a special clearance for handling or reviewing the sensitive information subject to the protective order, all Board employees must make every effort to prevent inadvertent disclosure.[2] If you handle a case that involves a protective order and are unsure how to proceed, please advise and consult your supervisor. Additionally, if you or your supervisor have questions, please consult Senior Legal Advisor Amy Minton, who serves as our primary point of contact on protective order issues.

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[2] The procedures covered in this memorandum and the Office of the Clerk's SOP do not apply to the handling of classified information. The Board's *Classified Control Memo* addresses the procedures that must be followed when receiving and processing case-related classified information. It is possible that a case could involve both classified information and sensitive information. In such cases, the procedures outlined in the *Classified Control Memo* will primarily dictate how the case is processed.

Processing Protective Order Cases by Board Legal Staff

The Office of the Clerk (Clerk's Office) will follow the procedures set forth in their Standard Operating Procedure (SOP) for Protective Order. When a case which involves a protective order is ready for adjudication, a Clerk's Office Program Analyst, who is responsible for protective order processing in the Clerk's Office will forward the case to a Senior Legal Advisor (SLA) or Federal Court Remand Coordinator, if involving a federal court remand. The SLA will consult the Chairman and/or Vice-Chairman regarding the assignment of the case to a Panel. The SLA and/or Federal Court Remand Coordinator will then coordinate with the Senior Panel Attorneys (SPA), regarding the assignment of the case to a staff attorney. The SLA will provide the SPA and/or Team Leader (TL) with the necessary processing paperwork for circulation of a proposed Board decision to the Board Member(s).

1. Assignment - The SPA and/or TL shall advise the staff attorney assigned to the case of the sensitive nature of the protective order related matter. Staff attorneys should be reminded of the following:

    - The record of proceedings (ROP) may not be removed from the Board.
    - "Special Processing Instructions" sheet to be attached to the front of the circulation sheet when proposed order circulated to Board Member(s).
    - Additional processing procedures that may be required for the particular case. For example, the Immigration Judge may have segregated portions of their decision or transcript. In such cases, if the Board's decision discusses the information subject to the protective order or information derived therefrom, the information shall be discussed in a separate attachment.
    - High Profile Memorandum - consult with SPA and/or TL.

2. Circulation - When the proposed decision is to be circulated to the Board Member(s), the staff attorney must attach the "Special Processing Instructions" sheet to the front of the circulation sheet.

3. Signed Decision - When the Board's decision has been signed, the designated Board Member Legal Assistant will notify (via e-mail) the appropriate SPA, Chief Clerk (Donna Carr), SLA (Amy Minton), and the Clerk's Office Program Analyst (Paulomi Dhokai) that the case has completed Board Member review and has been signed. The Legal Assistant will deliver the ROPs to the SLA after scanning their location in CASE.

4. SLA Review - A SLA will review the case for administrative purposes

    - Apprise the Chairman and/or Vice Chairman of the pending issuance of the decision.
    - If a High Profile Memorandum has been prepared, the SLA will collect the memorandum and forward it to the appropriate individual upon the issuance of the Board's signed decision
    - The SLA or Program Analyst will deliver the signed decision and ROPs to the Docket Team Leader or Acting Team Leader for issuance of the Board decision.

Memorandum

BIA
11-01

Subject	Date
CASE HOLD LIFTED - Texas Unauthorized Use of a Vehicle	January 25, 2011

To	From
Board Legal Staff	David L. Neal, Acting Chairman

I am lifting the hold on cases presenting the issue of whether the crime of Unauthorized Use of a Vehicle (UUV), in violation of Texas Penal Code Ann. § 31.07(a), is an aggravated felony crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F). I am doing so in light of *Serna-Guerra v. Holder*, 354 F.App'x 929 (5th Cir. 2009) (on remand from *Serna-Guerra v. Holder*, 129 S.Ct. 2764 (2009) and holding in unpublished decision that UUV is not an aggravated felony); *compare Brieva-Perez v. Gonzales*, 482 F.3d 356 (5th Cir. 2007) (holding that UUV properly classified as a crime of violence and thus aggravated felony) and *United States v. Galvan-Rodriguez*, 169 F.3d 217 (5th Cir.1999) (same).

Cases that were affected by this hold are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or Team Leader regarding the circulation of cases.

Memorandum

BIA 11-02

Subject	Date
UPDATE -Temporary Protected Status - Haiti	May 26, 2011

To	From
Board Legal Staff	David L. Neal, Acting Chairman DLN

The Secretary of Homeland Security recently announced the re-designation of Haiti for Temporary Protected Status (TPS) and extended the country's current TPS designation for 18 months, through January 22, 2013. *See* 76 FR 29000-04 (May 19, 2011). As a result, Haitians who do not currently have TPS and are eligible for TPS may register with the Department of Homeland Security (DHS) during designated registration periods. Aliens who were granted TPS pursuant to the Secretary's January 2010 designation are required to re-register with DHS.

The Board will continue to administratively close pending removal appeals involving Haitians who appear eligible for TPS. *See* Chairman's Memorandum, Temporary Protected Status - Haiti (BIA 10-02). Not all Haitians are eligible for TPS, so please review the record for apparent eligibility before circulating an administrative closure order.

General eligibility requirements for TPS pursuant to the Haiti re-designation are found in the Federal Register cite listed above, sections 244(a)(1), (c) of the Act, and corresponding regulations. An alien:

- must be a national of Haiti (or an alien with no nationality who last habitually resided in Haiti) who continuously resided in the United States since January 12, 2011, and has been continually physically present in the United States since July 23, 2011.

- must be admissible as an immigrant, except as provided in section 244(c)(2)(A) (permitting waiver of certain grounds of inadmissibility). *See also* 8 C.F.R. § 1244.3(b), (c). The grounds at section 212(a)(4), (5)(A) and (B), and (7)(A)(i) should not be applied. *See* 8 C.F.R. § 1244.3(a).

- cannot be convicted of any felony or two or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 1244.4(a) (referring to definitions of felony and misdemeanor).

- cannot be described in section 208(b)(2)(A) of the Act, which includes:

  - the persecutor bar
  - the particularly serious crime bar
  - the serious nonpolitical crime bar

- the security danger bar
- the terrorist bar
- firm resettlement

If the alien does not appear eligible for TPS, the case may be processed pursuant to normal procedures. Please note on the circulation sheet why there is no apparent eligibility.

When administratively closing a case, use the attached order. The "TPS" decision code should be selected on the circulation sheet. Some types of cases should not be administratively closed, *e.g.*, motions to reopen and reconsider; appeals of an IJ denial of a motion, untimely appeals, and detained cases. In these cases, add a footnote advising the alien of TPS where he or she may be eligible. Each Panel may issue its own standard language for this purpose.

In addition, for your information, application registration time-periods for initial registration or re-registration with DHS for Haitians eligible for TPS are found in the Federal Register at 76 FR 29777-81 (May 23, 2011). *See also* www.uscis.gov. In general, an alien:

- who does not currently have TPS must apply from May 19, 2011, through November 15, 2011.

- who has been granted TPS, must re-register starting May 23, 2011, to August 22, 2011.

- who has applied for TPS under the initial designation (January 2010), but the application is pending as of May 19, 2011, need not file a new application for TPS.

Please contact your Team Leader if you have questions.

Attachment

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security has both extended the existing designation of Haiti under the Temporary Protected Status (TPS) Program and re-designated Haiti for TPS. *See* 76 Fed. Reg. 29000-04 (May 19, 2011). The current designation has been extended to remain in effect through January 22, 2013. It appears from the record that the alien in the case before us is from Haiti and may be eligible to register or re-register TPS. Additional information about applying for or re-registering for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request **must** be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but certification of service on the opposing party. If properly submitted, the Board shall reinstate the proceedings.

FOR THE BOARD

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

February 2, 2012

BIA 12-01

MEMORANDUM

TO: Board Legal Staff

FROM: David L. Neal
Acting Chairman

SUBJECT: Circulation Sheet Guidance

The purpose of this memorandum is to explain and provide information regarding the proper completion of the Board's Circulation Sheet.

A circulation sheet serves many purposes. It allows Board Members, attorneys and paralegals to communicate case-related information. It also enables the docket team in the Clerk's Office to record important data regarding the decision of each case. Additionally, the circulation sheet is used to track issues such as Immigration Judge conduct and cases that warrant investigation for attorney discipline by EOIR's Office of General Counsel.

It is very important that attorneys and paralegals accurately designate the appropriate decision code. Certain recorded data is used by the Immigration Courts to schedule hearings for the respondent or to proceed with existing scheduled hearings. The selection of the wrong decision code can lead to the loss of valuable time and resources for personnel at the Immigration Court and the Board in correcting codes. Moreover, recorded decision code data is shared with Congress and the Department of Homeland Security. Therefore, accurately completing the circulation sheets is very important.

If you have any questions about completing a circulation sheet, please contact your Team Leader and/or Senior Panel Attorney, or Senior Legal Advisor Amy Minton.

INSTRUCTIONS FOR BOARD MEMBERS

A. Initials & Date Box - After reviewing the draft decision, Board Members should place their initials next to their names, followed by the date. This informs the Board Member legal assistant that the decision has been reviewed, and that the case may either be moved to another Board Member for consideration or sent to the Clerk's Office for processing.

B. Vote - Board Members should indicate "Yes" or "OK" if they accept the decision, or "No" if they do not agree with the decision as drafted. The Clerk's Office will not process the decision unless the vote of the Board Member has been recorded in this box.

C. SOP - Board Members should indicate whether they anticipate writing a separate opinion.

D. Decision Bank - If the Board Member believes that the decision should be included in the Decision Bank, the Board Member should write "Yes" or place a "√" or "X" in the Decision Bank box.

E. Special Instructions To Docket - This section should be used to bring any special processing instructions to the attention of the Clerk's Office Docket Team. For example, this section may be used to request that a courtesy copy of the decision be sent to an attorney who indicated that they represented the alien, but failed to file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (EOIR-27). This space should not be used to communicate with other Board Members or attorneys/paralegals.

> Copy of Circulation Sheet to Attorney/Paralegal, Team Leader & SPA Box - If positive feedback is provided to the attorney or paralegal in the Comments/Analysis section, the Board Member should mark the "Copy of Circulation Sheet to Atty/PL, TL & SPA" box in this section.

F. Comments/Analysis - After reviewing the decision, Board Members may elect to provide written comments regarding the drafted decision to other Board Members for their consideration in this section. Board Members may, however, prefer or elect to use a "Goldenrod" to communicate with other Board Members regarding the case rather than use the circulation sheet.

This area may also be utilized to provide positive feedback to the attorney or paralegal who prepared to the proposed decision. As noted above, if positive feedback is provided, the Board Member should select the "Copy of Circulation Sheet to Atty/PL, TL & SPA" box in the Special Instructions To Docket section.

G. IJC - If language in the proposed order addresses the Immigration Judge's conduct during the proceedings below, this notation should be selected. Moreover, if the Board's decision remands the case to a different Immigration Judge due to an Immigration Judge's conduct, this notation must be selected.

H. AC - This notation relates to egregious conduct of the private attorney or Department of Homeland Security (DHS) attorney in the case and should be selected when the record reveals that an attorney's conduct in representing the alien or DHS is of a serious nature, enough that it may warrant an investigation

by EOIR's Office of General Counsel (OGC). Circumstances which might warrant referral to OGC may be found at 8 C.F.R. § 1003.102.

In addition, this notation should be selected if there is any suspicions or concerns about possible fraud upon EOIR. The case may then be referred to OGC's Fraud Program for further consideration.

INSTRUCTIONS FOR ATTORNEYS AND PARALEGALS

A. 3 Bd. M or 1 Bd. M Box - Select the appropriate box to designate whether the circulated decision is either a three-Board Member decision or a single-Board Member decision.

B. Recirculate Box - This box should be selected if the proposed decision is being recirculated to the Board Member or Panel after revisions. When recirculating a case, a new circulation sheet should be used. The previous circulation sheet, comments, and prior proposed decision should all be attached to the new circulation sheet (folded). Furthermore, prior reviewed versions of the Board's decision should have the front page crossed out in order to avoid confusion as to which draft is the final decision to be mailed out to the parties by the Clerk's Office.

C. A# and Name - The Alien(s) name(s) and alien registration number(s) must appear on the designated lines of the circulation sheet. If there is more than one alien and the decisions are not the same for all the aliens involved in the proceedings, separate circulation sheets must be filled out in order to reflect the different decision codes.

D. Attorney/Paralegal - The initials of the attorney or paralegal who prepared the proposed decision should appear in the designated area, followed by the date. This information advises the Board Members, as well as the Case Management Specialist or legal assistant, that the proposed decision is ready for review by the Panel.

E. Decision Bank - If the attorney or paralegal believes that the decision should be included in the Decision Bank, write "Yes" or place a "√" or "X" in the Decision Bank box of the Attorney/Paralegal line.

F. Special Instructions To Docket - This section should be used to bring any special processing instructions to the attention of the Clerk's Office docket team. For example, include a notation here to request that a courtesy copy of the decision be sent to an attorney, who failed to file an EOIR-27, or to indicate that the decision is an Interim Order.

G. IJC - If language in the proposed order addresses the Immigration Judge's conduct in the proceedings below, this notation should be selected. Moreover, if the Board's decision remands the case to a different Immigration Judge due to an Immigration Judge's conduct, this notation must be selected.

H. AC - This notation relates to egregious conduct of the private attorney or Department of Homeland Security (DHS) attorney in the case and should be selected when the record reveals that an attorney's conduct in representing the alien or DHS is of a serious nature, enough that it may warrant an investigation

by EOIR's Office of General Counsel (OGC). Circumstances which might warrant referral to OGC may be found at 8 C.F.R. § 1003.102.

In addition, this notation should be selected if there is any suspicions or concerns about possible fraud upon EOIR. The case may then be referred to OGC's Fraud Program for further consideration.

I. Comments/Analysis - This section should be used to bring substantive issues related to the proposed decision to the attention of the Board Members. Comments should be clear and concise. If more room is necessary, prepare a separate memo, with the alien's name and alien registration number, and attach the memo to the circulation sheet. Note: Be sure to comply with any Panel-specific instructions when completing this section.

Immigration Judge - Identify the Immigration Judge whose decision is being challenged on appeal.

Circuit - Identify the controlling circuit law.

Document File Name - Identify the name and file location of the electronic copy of the proposed decision.

J. Decision Code - Only one decision code may be selected for each matter entered in CASE. Select the decision code that most accurately reflects the overall decision of the Board.[1]

Select the one decision code that most accurately reflects the overall decision of the Board.

SUS This code applies when the appeal is sustained, that is, the appealing party prevails.

DIS This code applies when the appeal is dismissed, that is the appealing party does not prevail, and the decision of the Immigration Judge or DHS officer stands. This code also applies if the Board's order dismisses the appeal and denies the motion to remand.

DVD This code applies when the decision dismisses the appeal, but contains a FURTHER ORDER granting or reinstating voluntary departure.

SAF This code applies when the Board affirms without opinion the decision of the Immigration Judge or DHS officer as provided at 8 C.F.R. § 1003.1(e)(4).

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[1] If the proposed decision is an interim decision, no decision code is required. Instead of selecting a decision code, "Interim Decision" or "Interim Order" should be indicated in the **Special Instructions to Docket** section of the Circulation Sheet.

SAV This code applies when the Board affirms without opinion the decision of the Immigration Judge as provided at 8 C.F.R. § 1003.1(e)(4), but further reinstates voluntary departure.

SUD This code applies when an appeal is summarily dismissed for any of the reasons stated at 8 C.F.R. §§ 1003.1(d)(2)(i)(A) - (H).

DEN This code applies when the motion is denied. This code also applies when a motion is number or timed barred.

GNR This code applies when a motion is granted and the Board disposes of the case **without remanding** the matter to the Immigration Judge or DHS officer. This code also applies if the Board's decision grants a motion to reopen for the limited purpose of reinstating voluntary departure.

BCR This code **MUST** be selected if the sole basis for the remand to the Immigration Court is for background and security checks to be completed or updated by the DHS. For example, the proposed decision provides that the alien is eligible for cancellation of removal, but the record does not reveal that security checks have been reported to the Immigration Judge by DHS or the record does not reveal that the prior reported checks are current.

NOTE: It is very important to select this code when the case is being remanded for the purpose of allowing DHS the opportunity to complete or update background and security checks. If not selected, the Immigration Court will not be able to properly process the case.

REM This code must be selected if ANY part of the decision, other than for background or security checks, remands the case to the Immigration Court or DHS officer.

NOTE: It is very important to select this code when the case is being remanded for any purpose other than for background and security checks. If not selected, the Immigration Court will not be able to properly process the case.

NJU This code applies where the Board lacks jurisdiction to review the merits of the appeal or motion. For example, this code is used when an alien files a direct appeal of an *in absentia* order, or an appeal is untimely.

CPG The CPC code was used to designated conditional asylum grants based upon coercive population control policies and has been replaced in CASE by the CPG code. Although the cap placed on CPC grants has been abolished, the requirement to record asylum grants based on coercive population control policies remains. The CPG code **should not be selected**, however, if the Board's decision remands the record pursuant to the security check rule. Rather, the **BCR** code should be selected.

Note: The CPG code also applies when the decision is dismissing a DHS appeal of an Immigration Judge's grant of asylum on a conditional basis or the decision summarily affirms the appeal, or the appeal is withdrawn.

WDL This code applies when an appeal or motion is withdrawn.

TER This code applies when the Board's decision results in the proceedings being terminated because deportability or alienage has not been established. In this regard, the alien is not subject to exclusion/deportation/removal proceedings. Some other examples include when an alien is deceased; DHS adjusts the alien's status to that of a lawful permanent resident; or the alien is granted US citizenship by DHS. This code also applies when the Board dismisses an appeal of an Immigration Judge's termination of proceedings. This code should **not** be selected when an application for relief, for example, asylum, is granted.

MBD This code applies (1) when a bond appeal is dismissed as moot per *Matter of Valles*, 21 I&N Dec. 769 (BIA 1997) (while an appeal is pending from an IJ's bond redetermination decision the IJ renders a second bond redetermination); (2) when the primary issue in the alien's deportation or removal proceeding is decided by the Board or IJ (administratively final decision); or (3) where the alien departed the United States (no longer considered in DHS custody).

CON This code applies when proceedings are being continued indefinitely. Currently, this code is being used to identify cases that are administratively closed because of repapering eligibility.

ABC This code applies to cases administratively closed pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991) ("*ABC*").

DED This code applies to cases that are administratively closed because the alien is subject to deferred enforced departure through Presidential Order.

TPS This code applies to cases administratively closed because the Attorney General or DHS has granted Temporary Protected Status to aliens of designated nationality.

ADM This code applies to cases that are administratively closed for reasons other than CON, ABC, DED, TPS, or APD.

APD This code applies to cases administratively closed based on DHS' affirmative exercise of prosecutorial discretion.

TPD This code applies to cases terminated based on DHS' affirmative exercise of prosecutorial discretion.

WPD This code applies when the withdrawal of the DHS appeal is based on DHS' affirmative exercise of prosecutorial discretion.

OTH This code applies only when none of the other codes accurately reflect the outcome of the case.

Questions about which decision code should be selected in a particular case, please discussed with one's Team Leader and/or Senior Panel Attorney, or Senior Legal Advisor Amy Minton.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

February 3, 2012

BIA 12-02

MEMORANDUM

TO: Board Legal Staff

FROM: David L. Neal
Acting Chairman

SUBJECT: DHS Exercise of Prosecutorial Discretion

In August of 2011, the Department of Homeland Security (DHS) announced an initiative to ensure that its resources were focused on the Administration's highest immigration enforcement priorities. This effort is commonly referred to as DHS' prosecutorial discretion initiative (or "PD"). This memorandum pertains to how the Board will respond to cases in which PD is exercised.

I. Background

Beginning in November 2011, attorneys for the Immigration and Customs Enforcement (ICE) began to review cases pending before the Immigration Courts and cases where charging documents had not yet been filed in the Immigration Court. *See* EOIR Statement Regarding Prosecutorial Discretion, Nov. 17, 2011, www.justice.gov/eoir.

DHS recently expanded the initiative to include cases pending before the Board. As of last week, DHS personnel have begun reviewing appeals to identify cases that may warrant the exercise of prosecutorial discretion.

While this is a DHS initiative, we need to monitor how this initiative will impact the Board, if at all, and be able to report on how the initiative has progressed. We must therefore be careful to record in which cases prosecutorial discretion has been exercised. This memorandum pertains to processing cases that involve an affirmative and express exercise of prosecutorial discretion by DHS attorneys.

II. Identifying cases

Active cases. DHS has advised us that, when it elects to exercise prosecutorial discretion in a case pending before us, we will receive a motion that both (a) affirmatively states that prosecutorial discretion is being exercised and (b) reflects that the respondent joins the motion. The motion will ask the Board to (i) administratively close proceedings, (ii) allow DHS to withdraw the appeal, or (iii) terminate proceedings.

Closed cases. We may receive joint motions to reopen cases in which there has been an administrative final order. Should that happen, the motion to reopen (for the purpose of administratively closing or terminating the case) will reflect that the motion is based upon the exercise of prosecutorial discretion.

Remanded cases. We may receive federal court remands with instructions to the Board either to administratively close or to terminate proceedings, based upon DHS' express desire to exercise prosecutorial discretion.

All cases. DHS informs us that any exercise of prosecutorial discretion will be expressly made. We are *never* to assume that prosecutorial discretion has been exercised but must always look for an articulation of the decision before characterizing a case as being resolved through prosecutorial discretion.

III. Decision format

In anticipation of receiving such motions, we have prepared form orders. Where prosecutorial discretion has been expressly exercised, please use the appropriate attached form order.

If you are assigned a case that requests termination of proceedings (whether with or without prejudice) based upon DHS' exercise of prosecutorial discretion, please advise and consult your supervisor for format guidance.

If you are assigned a case that has been remanded from the federal courts ordering the Board to take a particular course of action as a result of DHS' enforcement initiatives or prosecutorial discretion processes, please advise and consult your supervisor for format guidance.

III. Decision Codes

Our circulation sheet has been revised to record which of our decisions are based upon DHS' exercise of prosecutorial discretion. Specifically, Group V of the Decision Codes, as listed below, applies to cases in which the motion before the Board expressly reflects the exercise of prosecutorial discretion.

APD = Proceedings administratively closed based on DHS exercise of prosecutorial discretion

TPD = Proceedings terminated based on DHS exercise of prosecutorial discretion

WPD = Withdrawal of DHS appeal based on DHS exercise of prosecutorial discretion

If you are assigned a case that involves DHS' exercise of prosecutorial discretion and are unsure how to proceed, please advise and consult your supervisor.

Additionally, if you or your supervisor have questions, please consult Senior Legal Advisor Amy Minton, who serves as our primary point of contact on DHS prosecutorial discretion case issues.

Attachments

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

An appeal from the Immigration Judge's decision in this case is currently pending before the Board of Immigration Appeals ("Board"). The parties have now filed a joint motion to administratively close these proceedings based upon the Department of Homeland Security's exercise of prosecutorial discretion. The motion will be granted, and the proceedings administratively closed.

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

Accordingly, the following order will be entered.

ORDER: The proceedings before the Board of Immigration Appeals in this case are administratively closed.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Department of Homeland Security ("DHS") and the respondent have filed a joint motion to reopen and administratively close these proceedings based upon DHS' exercise of prosecutorial discretion. The motion to reopen proceeding will be granted, and the proceedings will be administratively closed.

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board of Immigration Appeals ("Board"). The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

Accordingly, the following orders will be entered.

ORDER: The joint motion to reopen is granted.

FURTHER ORDER: The proceedings before the Board of Immigration Appeals in this case are administratively closed.

FOR THE BOARD

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

ORDER:

The Board of Immigration Appeals ("Board") has been advised that the Department of Homeland Security, in the exercise of prosecutorial discretion, has withdrawn its appeal. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

FOR THE BOARD

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

May 29, 2012

BIA 12-03

MEMORANDUM

TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: Background and Security Check Interim Rule – Board Case Processing UPDATE

The Department of Homeland Security (DHS), through the ICE Office of the Principal Legal Advisor, has advised the Executive Office for Immigration Review that, effective May 1, 2012, the ICE Assistant Chief Counsels (ACCs) will state on the record before the Immigration Judge the precise date that the background and security check will expire. As a result, the Board is anticipating an increase in decisions granting or affirming an Immigration Judge's grant of relief outright as opposed to issuing a remand due to expired checks ("Background Check Remand" or "BCR"). The purpose of this memorandum is to address the Board's process for when reported checks are "current" (i.e., evidence of an expiration date and that time period has not elapsed).

I. General Overview of the Background and Security Check Rule

Effective April 1, 2005, the Background and Security Check rule prohibits the Board from affirming or granting particular forms of relief ("covered relief") without first ensuring that DHS has been provided an opportunity to complete and report background/security checks. *See* 8 C.F.R. § 1003.1(d)(6). Where covered relief is to be affirmed or granted, but checks have not been completed or expired, the Board issues a Background Check Remand or BCR whereby the record is remanded to the Immigration Judge to allow DHS the opportunity to complete or update the appropriate checks. The Board will issue an order explicitly affirming or granting the covered form of relief only in cases where the record before the Board affirmatively reflects that DHS reported the checks to the Immigration Judge and those checks have not expired. The Board's order in such cases *must* also include specific language notifying the alien that he or she must contact the appropriate DHS office in order to obtain documentation evidencing status. *See* 8 C.F.R. § 1003.47(i).

II. Covered Forms of Relief

Below is a listing of some of the forms of relief covered by the Background and Security Check Rule.

- Asylum under section 208 of the Act;
- Adjustment of status to that of an LPR under section 209 or 245 of the Act or any other provision of law;
- Conditional permanent resident status or the removal of the conditional basis of such status under section 216 or 216A;
- Waivers of inadmissibility or deportability under sections 209(c), 212, or 237 of the Act or other provisions of law;
- Cancellation of removal under section 240A of the Act, suspension of deportation under former section 244 of the Act, relief from removal under former section 212(c) of the Act, or any similar form of relief (includes cancellation under NACARA § 203);
- Withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture;
- Conditional grants relating to the above, such as for applications seeking cancellation of removal in light of section 240(e) of the Act; and
- Registry under section 249 of the Act.

III. Background Check Remand or BCR

The Board *must* remand the record to the Immigration Judge where the Board determines that relief should be granted or affirmed, but the record of proceedings does not reveal that checks have been completed and reported, or prior checks are no longer current. A decision remanded for the sole purpose of allowing DHS to complete or update checks *must* contain the background check remand standard FURTHER ORDER language, and the circulation sheet *must* have the decision code "BCR" selected.

For guidance regarding the Board's procedures for processing cases where the Board must issue a Background Check Remand, please refer to the Background Check Remand Guidance (BIA 07-02) issued on March 1, 2007, which is available on the BIA Web Page at http://eoirweb/ccm/bia/biaweb/bia_index.html.

IV. No Background Check Remand or BCR – BIA Issue Grant/Affirm IJ Grant

Where the Board determines a

- covered form of relief should be granted or affirmed,

- the record reflects that checks were completed, reported, and considered by the Immigration Judge; and

- reported checks are "current" (*i.e.*, expiration date provided by DHS on the record and that time period has not elapsed)

the Board may issue a decision that grants or affirms the grant of relief. However, the Board's decision *must* also include specific language notifying the alien that he or she must contact the appropriate DHS office in order to obtain documentation evidencing status. If the requirements listed above are met, then the procedures listed below need to be followed.

A. Decision format

(1) DO NOT include the expiration date of the checks in Board decision.

The Board's decision should not contain the expiration date of the checks reported by DHS. Rather, if the decision references DHS' notification and status of the checks being "current" (*i.e.*, expiration date provided by DHS on the record and that time period has not elapsed), then it should be general in nature. For example,

> The record reflects DHS' notification that the relevant security checks have been completed and are current. Accordingly, the following order(s) will be entered.

(2) Explicitly state that relief is granted or affirmed.

The respondent is required by DHS to bring a copy of the Board's decision (final order granting/affirming relief) when seeking evidence of status. Therefore, the draft decision *must* explicitly state in the affirmative that the relief is granted or affirmed.

Below are some general examples:

- Alien's appeal is sustained and the application for asylum is granted.

  > ORDER: The appeal is sustained, and the respondent's application for asylum is granted.

- Alien's appeal of denial of asylum and withholding is dismissed, but grant of CAT deferral is affirmed.

  > ORDER: The respondent's appeal of the denial of his applications for asylum and withholding of removal is dismissed.
  >
  > FURTHER ORDER: The Immigration Judge's grant of the respondent's request for deferral of removal to [country] under the Convention Against Torture is affirmed.

- Alien's appeal is sustained and the application for cancellation of removal pursuant to section 240A(b) of the Act (LPR cancellation) is granted.

  > ORDER: The respondent's appeal is sustained.
  >
  > FURTHER ORDER: The respondent's removal proceedings are canceled under to section 240A(a) of the Immigration and Nationality Act.

Reminder: There is a statutory annual cap on the number of grants of non-LPR cancellation of removal under section 240A(b) of the Act and former suspension of

deportation under former section 244(a) of the Act. Before proposing an order granting forms of relief subject to this statutory annual cap, consult your Senior Panel Attorney or Team Leader.

- DHS appeal of an Immigration Judge's grant of relief is dismissed.

  ORDER: The DHS appeal is dismissed.

  FURTHER ORDER: The Immigration Judge's decision granting the respondent's application for asylum is affirmed.

B. Notice to Alien to Contact DHS/USCIS

A decision that grants or affirms an Immigration Judge's grant of relief *must* contain the NOTICE TO ALIEN TO CONTACT DHS/USCIS standard notice language. This language *must* appear above the Board Member signature line.

> NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions ("Post-Order Instructions") on procedures for obtaining status documentation or work authorization may be found at the USCIS website at www.uscis.gov. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on EOIR's website at www.justice.gov/eoir/. You may also call the USCIS national customer service number at 1-800-275-5283.

C. Affirmance without opinion (AWO) order

Because the Immigration Judge's decision becomes the final agency decision when the Board issues an AWO, avoid using such an order when affirming an Immigration Judge's decision to grant relief. Instead, a short order approach should be utilized to affirm an Immigration Judge's grant of a covered form of relief. The short order should generally indicate that relief has been granted and what type of relief has been granted.

D. Circulation sheet

(1) Report Expiration Date.

The DHS-reported expiration date and transcript cite must be identified in the Special Instructions to Docket box on the front-side of the circulation sheet.

(2) Decision Code.

Generally, either the decision code "SUS" or "DIS" will be the likely code selected in a case where the Board is granting or affirming a covered form of relief. However, if asylum is granted or affirmed based on Coercive Population Control Policies, then the decision code "CPG" *must* be selected.

If you have questions or require further clarification, please contact your Senior Panel Attorney or Team Leader.

Additionally, if you or your supervisor has questions about this guidance, please consult Senior Legal Advisor Amy Minton, who serves as our primary point of contact on Background and Security Check rule case issues.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

June 21, 2012

BIA 12-04

MEMORANDUM

TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD – DHS' Deferred Action Process for Young People

On June 18, 2012, I authorized the placement of a temporary hold on cases appearing to fall within the Department of Homeland Security (DHS) memo regarding deferred action for young people who are low enforcement priorities.

My June 18th instructions track the DHS memorandum's eligibility criteria, directing that a respondent must satisfy *all* of DHS' criteria to be considered for a hold. However, as many of you have observed, some of the listed criteria will not be apparent from the record of proceedings. Accordingly, below is amended information for identifying cases subject to this hold.

Which cases are subject to the HOLD?

- Respondent came to the United States under the age of sixteen,
- Respondent has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise posses a threat to national security or public safety, *and*
- Respondent is not above the age of thirty.

What if the respondent is a rider?

If the respondent is a rider, the respondent, the lead, and associated riders should be put on hold.

What if the respondent is in bond or custody proceedings?

Bond and custody proceedings are separate and apart from removal proceedings, so continue to adjudicate the case.

What if the proposed order would remand the case to the Immigration Judge for further proceedings?

Continue to adjudicate the case. Where appropriate, add a footnote recognizing the Secretary's June 15, 2012, memorandum and noting that parties should address as appropriate on remand.

What do I do if I identify a case that falls within this hold category, or I have any questions?

If you identify a case, bring it to your team leader or Senior Panel Attorney. If you have any questions or require further clarification, please contact your team leader or Senior Panel Attorney. If you and/or your supervisor have questions about this guidance, please consult Senior Legal Advisor Amy Minton.

Attachments

- June 18, 2012, instructions
- USCIS - Deferred Action Process for Young People Who Are Low Enforcement Priorities

From: Walker, Jake (EOIR)
Sent: Monday, June 18, 2012 3:31 PM
Subject: "Dreamer" Cases

Dear Colleagues,

As you know, the President announced last Friday that certain young people without status, commonly referred to as "Dreamers," will now be eligible for deferred action. DHS has formally announced that it would exercise prosecutorial discretion in cases that involve an alien who meets *all* of a set of select criteria, which are listed here:

- came to the United States under the age of sixteen
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety
- is not above the age of thirty.

As this is a Presidential initiative, we must handle cases before us in a fashion consistent with DHS' efforts. Therefore, effective immediately, all legal staff are to identify cases before them (whether in the order drafting stage or in circulation) to see whether that case involves a respondent that fits the criteria below. (To be clear, do not review all ROPs in your position to identify qualifying respondents. Rather, these cases are to be identified in the normal course of business. Attorney and paralegal staff need only review those cases currently being prepared for circulation, and Board Members need only review cases already in circulation.)

If a case appears to fit the criteria and is with an attorney or paralegal, he or she should consult their Team Leader to assess whether the case should be placed on a Chairman's hold or continue processing/adjudication. Board Members should consult me or SLA Amy Minton on whether a hold is appropriate.

For more background information, see

- http://www.dhs.gov/files/enforcement/deferred-action-process-for-young-people-who-are-low-enforcement-priorities.shtm
- http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&fb_source=message

This applies whether the respondent is a lead or a rider. Please see your TL or SPA if you have questions.

David L. Neal
Chairman

U.S. Citizenship and Immigration Services

Deferred Action Process for Young People Who Are Low Enforcement Priorities

U.S. Citizenship and Immigration Services (USCIS) alerts eligible individuals NOT to submit a deferred action request under the Deferred Action Process for Young People memorandum issued by Secretary Napolitano on June 15. **If you submit now, your application will be rejected.** The Secretary's directive gives USCIS 60 days to create a process to accept these requests and we are unable to accept requests at this time. Please continue to check our website for updates.

Over the past three years, this Administration has undertaken an unprecedented effort to transform the immigration enforcement system into one that focuses on public safety, border security and the integrity of the immigration system. As DHS continues to focus its limited enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, including aliens convicted of crimes, with particular emphasis on violent criminals, felons, and repeat offenders, DHS will move to exercise prosecutorial discretion to ensure that enforcement resources are not expended on low priority cases, such as individuals who were brought to this country through no fault of their own as children, have not been convicted of a felony offense, a significant misdemeanor offense, or multiple misdemeanor offenses, and meet other key criteria.

Effective immediately, certain young people who were brought to the United States through no fault of their own as young children and meet several key criteria will be considered for relief from removal from the country or entered into removal proceedings. Those who demonstrate that they meet the criteria will be eligible to receive deferred action for a period of two years, subject to renewal.

Only those individuals who can prove through verifiable documentation that they meet these criteria will be eligible for deferred action. Individuals will not be eligible if they are not currently in the United States and cannot prove that they have been physically present in the United States for a continuous period of not less than 5 years immediately preceding today's date. The use of prosecutorial discretion confers no substantive right or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights.

While this guidance takes effect immediately, USCIS and ICE expect to begin implementation of the application processes within sixty days. **Do not apply - this application process is not yet available. If you apply early, your application will be rejected.** Beginning June18, 2012, individuals can call USCIS' hotline at 1-800-

375-5283 or ICE's hotline at 1-888-351-4024 during business hours with questions or to request more information on the forthcoming process.

Frequently Asked Questions

Who is eligible to receive deferred action under the Department's new directive?
Pursuant to the Secretary's June 15, 2012 memorandum, in order to be eligible for deferred action, individuals must:

1. Have come to the United States under the age of sixteen;
2. Have continuously resided in the United States for at least five years preceding June 15, 2012 and are present in the United States on June 15, 2012;
3. Currently be in school, have graduated from high school, have obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States;
4. Have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety;
5. Not be above the age of thirty.

Individuals must also complete a background check and, for those individuals who make a request to USCIS and are not subject to a final order of removal, must be 15 years old or older.

What is deferred action?
Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action does not confer lawful status upon an individual. In addition, although an alien granted deferred action will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect, deferred action does not absolve individuals of any previous or subsequent periods of unlawful presence.

Under existing regulations, an individual who has been granted deferred action is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." Deferred action can be terminated at any time at the agency's discretion or renewed by the agency.

How will the new directive be implemented?
Individuals who are not in removal proceedings or who are subject to a final order of removal will need to submit a request for a review of their case and supporting evidence to U.S. Citizenship and Immigration Services (USCIS). Individuals may request deferred action if they meet the eligibility criteria. In the coming weeks, USCIS will outline and announce the procedures by which individuals can engage in this process. This process is not yet in effect and requests should not be submitted at this time. Beginning June 18, individuals may call the USCIS hotline at 1-800-375-5283, from 8 a.m. to 8 p.m., with questions or to request more information on the new process. The hotline offers assistance in English and Spanish. Individuals seeking more information on the new process should visit USCIS's website (at http://www.uscis.gov).

For individuals who are in removal proceedings before the Executive Office for Immigration Review, ICE will, in the coming weeks, announce the process by which qualified individuals may request a review of their case. Additional information is available from the ICE Office of the Public Advocate at http://www.ice.gov/about/offices/enforcement-removal-operations/publicadvocate/ Beginning June 18, individuals may call the ICE hotline at 1-888-351-4024, from 9 a.m. to 5 p.m., with questions or to request more information on the new process.

For individuals who are in removal proceedings and have already been identified as meeting the eligibility criteria as part of ICE's case-by-case review, ICE will immediately begin to offer deferred action for a period of two years, subject to renewal.

Are individuals who receive deferred action pursuant to the new directive eligible for employment authorization?
Yes. Pursuant to existing regulations, individuals who receive deferred action may apply for and may obtain employment authorization from USCIS provided they can demonstrate an economic necessity for their employment. Information about employment authorization requests is available on USCIS's website at http://www.uscis.gov/i-765.

Does the process result in permanent lawful status for beneficiaries?
No. The grant of deferred action under this new directive does not provide an individual with permanent lawful status or a pathway to obtaining permanent lawful status. Only the Congress, acting through its legislative authority, can confer the right to permanent lawful status.

Why will deferred actions only be granted for two years?
Grants of deferred action will be issued in increments of two years. At the expiration of the two year period, the grant of deferred action can be renewed, pending a review of the individual case.

If an individual's period of deferred action is extended, will individuals need to re-apply for an extension of their employment authorization?
Yes. If an individual applies for and receives an extension of the period for which he or she was granted deferred action, he or she must also request an extension of his or her employment authorization.

Does this policy apply to those who are subject to a final order of removal?
Yes. An individual subject to a final order of removal who can demonstrate that he or she meets the eligibility criteria can request a review of his or her case and receive deferred action for a period of two years, subject to renewal. All cases will be considered on an individualized basis.

This process is not yet in effect and requests should not be submitted at this time. In the coming weeks, USCIS will outline and announce the procedures by which individuals can engage in this process. Beginning June 18, individuals may call the USCIS hotline at 1-800-375-5283, from 8 a.m. to 8 p.m., with questions or to request more information on the new process. The hotline offers assistance in English and Spanish. Individuals seeking more information on the new process should visit USCIS's website (at http://www.uscis.gov).

How soon after USCIS receives a request to review a case will the individual receive a decision on his or her request?
USCIS will provide additional information on this issue in the coming weeks. Information will be made publicly available at http://www.uscis.gov/.

If an individual who is about to be removed by ICE believes he or she satisfies the eligibility criteria for the new process, what steps should he or she take to ensure his or her case is reviewed before removal?
Individuals who believe they can demonstrate that they satisfy the eligibility criteria and are about to be removed should immediately contact either the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week) or the ICE Office of the Public Advocate through the Office's hotline at 1-888-351-4024 (staffed 9am – 5pm, Monday – Friday) or by e-mail at EROPublicAdvocate@ice.dhs.gov.

If an individual who satisfies the eligibility criteria is encountered by Customs and Border Protection (CBP) or ICE, will he or she be placed into removal proceedings?
This policy is intended to allow ICE and CBP to focus on priority cases. Pursuant to the direction of the Secretary of Homeland Security, for individuals who satisfy the eligibility criteria, CBP or ICE should exercise their discretion to prevent them from being apprehended, placed into removal proceedings, or removed. If individuals, including individuals in detention, believe they were placed into removal proceedings in violation of this policy, they should contact either the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week) or the ICE Office of the Public Advocate through the Office's hotline at 1-888-351-4024 (staffed 9am – 5pm, Monday – Friday) or by e-mail at EROPublicAdvocate@ice.dhs.gov.

If an individual accepted an offer of administrative closure under the case-by-case review process or if his or her case was terminated as part of the case-by-case review process, can he or she receive deferred action under the new process?
Yes. Individuals who can demonstrate that they meet the eligibility criteria will be eligible for deferred action even if they had accepted an offer of administrative closure or termination under the case-by-case review process. For individuals who are in removal proceedings and have already been identified as meeting the eligibility criteria as part of ICE's case-by-case review, ICE will immediately begin to offer deferred action for a period of two years, subject to renewal.

If an individual declined an offer of administrative closure under the case-by-case review process, can he or she receive deferred action under the new process?
Yes. Individuals who can demonstrate that they meet the eligibility criteria will be eligible for deferred action even if they declined an offer of administrative closure under the case-by-case review process.

If an individual's case was reviewed as part of the case-by-case review process but he or she was not offered administrative closure, can he or she receive deferred action under the new process?
Yes. Individuals who can demonstrate that they meet the eligibility criteria will be

eligible for deferred action even if they were not offered administrative closure following review of their case as part of the case-by-case review process.

Will DHS personnel responsible for reviewing requests for an exercise of prosecutorial discretion under this process receive special training?
Yes. ICE and USCIS personnel responsible for considering requests for an exercise of prosecutorial discretion under the Secretary's directive will receive special training.

Will individuals be subject to background checks before they can receive an exercise of prosecutorial discretion?
Yes. All individuals will undergo biographic and biometric background checks prior to receiving an exercise of prosecutorial discretion. Individuals who have been convicted of any felony, a significant misdemeanor offense, three or more misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or otherwise pose a threat to national security or public safety are not eligible to be considered for deferred action under the new process.

What do background checks involve?
Background checks involve checking biographic and biometric information provided by the individuals against a variety of databases maintained by DHS and other federal government agencies.

What documentation will be sufficient to demonstrate that an individual came to the United States before the age of 16?
Documentation sufficient for an individual to demonstrate that he or she came to the United States before the age of 16 includes, but is not limited to: financial records, medical records, school records, employment records, and military records.

What documentation will be sufficient to demonstrate that an individual has resided in the United States for a least five years preceding June 15, 2012?
Documentation sufficient for an individual to demonstrate that he or she has resided in the United States for at five years immediately preceding June 15, 2012 includes, but is not limited to: financial records, medical records, school records, employment records, and military records.

What documentation will be sufficient to demonstrate that an individual was physically present in the United States as of June 15, 2012?
Documentation sufficient for an individual to demonstrate that he or she was physically present on June 15, 2012, the date the memorandum was issued, includes, but is not limited to: financial records, medical records, school records, employment records, and military records.

What documentation will be sufficient to demonstrate that an individual is currently in school, has graduated from high school, or has obtained a general education development certificate (GED)?
Documentation sufficient for an individual to demonstrate that he or she is currently in school, has graduated from high school, or has obtained a GED certificate includes, but is not limited to: diplomas, GED certificates, report cards, and school transcripts.

What documentation will be sufficient to demonstrate that an individual is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States?
Documentation sufficient for an individual to demonstrate that he or she is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States includes, but is not limited to: report of separation forms, military personnel records, and military health records.

What steps will USCIS and ICE take to prevent fraud in the new processes?
An individual who knowingly makes a misrepresentation to USCIS or ICE, or knowingly fails to disclose facts to USCIS or ICE, in an effort to receive deferred action or work authorization in this new process will be treated as an immigration enforcement priority to the fullest extent permitted by law, subjecting the individual to criminal prosecution and/or removal from the United States.

Are individuals with a conviction for a felony offense, a significant misdemeanor offense, or multiple misdemeanors eligible for an exercise of prosecutorial discretion under this new process?
No. Individuals who have been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct are not eligible to be considered for deferred action under the new process.

What offenses qualify as a felony?
A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.

What offenses qualify as a "significant misdemeanor"?
A significant misdemeanor is a federal, state, or local criminal offense punishable by no more than one year of imprisonment or even no imprisonment that involves: violence, threats, or assault, including domestic violence; sexual abuse or exploitation; burglary, larceny, or fraud; driving under the influence of alcohol or drugs; obstruction of justice or bribery; unlawful flight from arrest, prosecution, or the scene of an accident; unlawful possession or use of a firearm; drug distribution or trafficking; or unlawful possession of drugs.

How many non-significant misdemeanors constitute "multiple misdemeanors" making an individual ineligible for an exercise of prosecutorial discretion under this new process?
An individual who is not convicted of a significant misdemeanor but is convicted of three or more other misdemeanors not occurring on the same day and not arising out of the same act, omission, or scheme of misconduct is not eligible to be considered for deferred action under this new process.

What qualifies as a national security or public safety threat?
If the background check or other information uncovered during the review of an individual's request for deferred action indicates that the individual's presence in the United States threatens public safety or national security, he or she will be ineligible for an exercise of prosecutorial discretion. Indicia that an individual poses such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States.

How will ICE and USCIS handle cases involving individuals who do not satisfy the eligibility criteria under this new process but may be eligible for an exercise of prosecutorial discretion under the June 2011 Prosecutorial Discretion Memoranda?
If an individual has a final order of removal and USCIS determines that he or she does not satisfy the eligibility criteria, then it will reject the individual's request for deferred action. That individual may then request an exercise of prosecutorial discretion under the ICE June 2011 Prosecutorial Discretion Memoranda through any of the established channels at ICE, including through a request to the ICE Office of the Public Advocate or to the local Field Office Director. USCIS will not consider requests for review under the ICE June 2011 Prosecutorial Discretion Memoranda.

If an individual is currently in removal proceedings and ICE determines that he or she does not satisfy the eligibility criteria for deferred action under this process, it will then consider whether the individual is otherwise eligible for an exercise of prosecutorial discretion under its current practices for assessing eligibility under the June 2011 Prosecutorial Discretion Memoranda.

Will there be supervisory review of decisions by ICE and USCIS under this process?
Yes. Both ICE and USCIS will develop protocols for supervisory review as part of their implementation of the new process.

Can individuals appeal a denial by ICE or USCIS of their request for an exercise of prosecutorial discretion under the new process?
No. Individuals may not appeal a denial by ICE or USCIS of their request for an exercise of prosecutorial discretion. However, ICE and USCIS will develop protocols for supervisory review as part of their implementation of the new process. Although there is no right for appeal, individuals in removal proceedings who believe their cases were not correctly handled may contact the ICE Office of the Public Advocate either by phone at 1-888-351-4024 or by e-mail at EROPublicAdvocate@ice.dhs.gov.

Will dependents and other immediate relatives of individuals who receive deferred action pursuant to this process also be eligible to receive deferred action?
No. The new process is available only to those who satisfy the eligibility criteria. As a result, the immediate relatives, including dependents, of individuals who receive deferred action pursuant to this process are not eligible to apply for deferred action as part of this process unless they independently satisfy the eligibility criteria.

If an individual's request to USCIS for deferred action is denied, will he or she be placed in removal proceedings?
For individuals whose requests for deferred action are denied by USCIS, USCIS will apply its existing Notice to Appear guidance governing USCIS's referral of cases to ICE and issuance of notices to appear. Under this guidance, individuals whose requests are denied under this process will be referred to ICE if they have a criminal conviction or there is a finding of fraud in their request.

Should individuals who are not in removal proceedings but believe themselves to be eligible for an exercise of deferred action under this process seek to place

themselves into removal proceedings through encounters with ICE or CBP?
No. Individuals who are not in removal proceedings but believe that they satisfy the eligibility criteria should submit their request for review of their case to USCIS under the procedures that USCIS will implement.

This process is not yet in effect and requests should not be submitted at this time. Beginning June 18, individuals may call the USCIS hotline at1-800-375-5283, from 8 a.m. to 8 p.m., with questions or to request more information on the new process. The hotline offers assistance in English and Spanish. Individuals seeking more information on the new process should visit USCIS's website (at http://www.uscis.gov).

If I receive deferred action through this process, will I be able to travel outside the United States?
USCIS is exploring this issue and will resolve it in the coming weeks as part of its implementation plan.

Will there be any exceptions to the requirement that an individual must have resided in the United States for a least five years preceding June 15, 2012?
An individual must demonstrate that he or she has resided in the United States for a least five years preceding June 15, 2012. Brief and innocent absences undertaken for humanitarian purposes will not violate this requirement.

What should I do if I am eligible under this process and have been issued an ICE detainer following an arrest by a state or local law enforcement officer?
If you meet the eligibility criteria and have been served a detainer, you should immediately contact either the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week) or the ICE Office of the Public Advocate either through the Office's hotline at 1-888-351-4024 (staffed 9am – 5pm, Monday – Friday) or by e-mail at EROPublicAdvocate@ice.dhs.gov.

Does deferred action provide individuals with a path to citizenship or permanent legal status?
No. A grant of deferred action is a form of prosecutorial discretion that does not confer a path to citizenship or lawful permanent resident status. Only the Congress, acting through its legislative authority, can confer these rights.

Why isn't DHS allowing other individuals to request deferred action under this process?
As a general matter, young people who, through no fault of their own, were brought to this country as children, lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

Does this Administration remain committed to comprehensive immigration reform?
Yes. The Administration has consistently pressed for passage of comprehensive immigration reform, including the DREAM Act, because the President believes these steps are critical to building a 21st century immigration system that meets our nation's economic and security needs.

Is passage of the DREAM Act still necessary in light of the new process?
Yes. As the President has stated, individuals who would qualify for the DREAM Act deserve certainty about their status, and this new process does not provide that certainty. Only the Congress, acting through its legislative authority, can confer the certainty that comes with a pathway to permanent lawful status.

How can I get more information on the new process?
Individuals seeking more information on the new process should visit ICE's website (at www.ice.gov), USCIS's website (at www.uscis.gov), or DHS's website (at www.dhs.gov). Beginning June 18, individuals can also call ICE's hotline (at 1-888-351-4024) or USCIS's hotline (at 1-800-375-5283) during business hours with questions or to request more information on the new process.

Where can I find more information about where to go for Deferred Action?

I...	Who to submit a request to review my case:	Where can I get more information:
...am subject to a final order of removal.	U.S. Citizenship and Immigration Services (USCIS) when the application period opens	USCIS website at http://www.uscis.gov. Beginning June 18: USCIS hotline at 1-800-375-5283 (8 am-8 pm; English & Spanish)
...have a case pending before the Executive Office for Immigration Review or a federal court.	U.S. Immigration and Customs Enforcement (ICE) when the process for accepting requests is announced	ICE website at: http://www.ice.gov. Beginning June 18: ICE hotline at 1-888-351-4024 (9am – 5pm; English and Spanish)
...have never been apprehended or placed into removal proceedings.	U.S. Citizenship and Immigration Services (USCIS) when the application period opens	USCIS website at http://www.uscis.gov. Beginning June 18: USCIS hotline at 1-800-375-5283 (8 am-8 pm; English & Spanish

Last updated: 06/19/2012

Plug-ins

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

September 7, 2012

BIA 12-05

MEMORANDUM

TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD LIFTED – DHS' Deferred Action Process for Young People

I am lifting the hold on cases that appear to fall within the Department of Homeland Security (DHS) memo regarding deferred action for young people who are low enforcement priorities.

The Board will continue to include a footnote in our decisions in cases where the respondent(s) may fall within the deferred action program. Cases that were affected by this hold will be returned to the Panels for adjudication.

Footnote

The footnote below presumes that there is only one respondent. If there is more than one respondent, then the second sentence could be modified to read "A respondent in these proceedings may be eligible to seek deferred action."

> We note that on June 15, 2012, the Secretary of the Department of Homeland Security (DHS) announced that certain young people, who are low law enforcement priorities, will be eligible for deferred action. The respondent may be eligible to seek deferred action. Information regarding DHS' Consideration of Deferred Action for Childhood Arrivals may be obtained on-line (www.uscis.gov or www.ice.gov) or by phone on USCIS hotline at 1-800-375-5283 or ICE hotline at 1-888-351-4024.

Which cases should the footnote be included?

- Respondent came to the United States under the age of sixteen,
- Respondent has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise posses a threat to national security or public safety, *and*

- Respondent is not above the age of thirty.

What if the proposed order would remand the case to the Immigration Judge for further proceedings?

Add a footnote recognizing DHS' Deferred Action program, noting that the parties should address the respondent's eligibility as appropriate on remand.

If you have any questions or require further clarification, please contact your team leader or Senior Panel Attorney. If you and/or your supervisor have questions about this guidance, please consult Senior Legal Advisor Amy Minton.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

March 26, 2013

BIA 13-01

MEMORANDUM

TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: UPDATE – Temporary Protected Status - Haiti

In October 2012 the Secretary of Homeland Security announced the extension of the designation of Haiti for Temporary Protected Status (TPS) for 18 months, through July 22, 2014. *See* 77 FR 59943-59948 (Oct. 1, 2012). As a result, Haitians who have never been granted TPS may be eligible to file a late initial application with DHS. Aliens who were granted TPS pursuant to the Secretary's prior designation are required to re-register with DHS.[1]

The Board will continue to administratively close pending removal appeals involving Haitians who appear eligible for TPS. *See* Chairman's Memorandum, Temporary Protected Status – Haiti (BIA 10-02), and Chairman's Memorandum, UPDATE- Temporary Protected Status – Haiti (BIA 11-02). Not all Haitians are eligible for TPS, so please review the record for apparent eligibility before circulating an administrative closure order.

General eligibility requirements for TPS pursuant to the Haiti re-designation are found in the Federal Register cite listed above, sections 244(a)(1), (c) of the Act, and corresponding regulations. An alien:

- must be a national of Haiti (or an alien with no nationality who last habitually resided in Haiti) who continuously resided in the United States since January 11, 2011, and has been continuously physically present in the United States since July 23, 2011.

[1] DHS originally established a 60-day re-registration period from October 1, 2012, through November 30, 2012, but extended the re-registration period through January 29, 2013. *See* 77 FR 76503-04 (Dec. 28, 2012).

- must be admissible as an immigrant, except as provided in section 244(c)(2)(A) (permitting waiver of certain grounds of inadmissibility). *See also* 8 C.F.R. § 1244.3(b), (c). The grounds at section 212(a)(4), (5)(A) and (B), and (7)(A)(i) should not be applied. *See* 8 C.F.R. § 1244.4(a) (referring to definitions of felony and misdemeanor).

- cannot be described in section 208(b)(2)(A) of the Act, which includes:

  - the persecutor bar
  - the particularly serious crime bar
  - the serious nonpolitical crime bar
  - the security danger bar
  - the terrorist bar
  - firm resettlement

If the alien does not appear eligible for TPS, the case may be processed pursuant to normal procedures. Please note on the circulation sheet why there is no apparent eligibility.

When administratively closing a case, use the attached order. The "TPS" decision code should be selected on the circulation sheet. Some types of cases should not be administratively closed, *e.g.*, motions to reopen and reconsider; appeals of an Immigration Judge denial of a motion, untimely appeals, and detained cases. In these cases, add a footnote advising the alien of TPS where he or she may be eligible. Each Panel may issue its own standard language for this purpose.

In addition, for your information, application registration periods for initial registration or re-registration with DHS for Haitians eligible for TPS are found in the Federal Register cites listed in this memo. Additionally, you should refer to the USCIS website at www.uscis.gov.

Please contact your Team Leader if you have questions.

Attachment

File: A

Date:

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security both extended the existing designation of Haiti under the Temporary Protected Status (TPS) Program and re-designated Haiti for TPS. *See* 77 FR 59943-48 (Oct. 1, 2012). The current designation has been extended to remain in effect through July 22, 2014. It appears from the record that the alien in the case before us is from Haiti and may be eligible to register or re-register TPS. Additional information about applying for or re-registering for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

FOR THE BOARD

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

May 1, 2013

BIA 13-02

MEMORANDUM TO: Board Legal Staff
Board of Immigration Appeals

FROM: David L. Neal
Chairman

SUBJECT: Unrepresented Detained Aliens with Competency Issues

On April 22, 2013, the Office of the Chief Immigration Judge announced that it would implement certain procedural protections for detained mentally incompetent respondents appearing before the immigration courts. (The memorandum of the Chief Immigration Judge is attached for your reference.) One of those protections is that EOIR will make available a qualified legal representative to represent those respondents who are detained, unrepresented, and not mentally competent to represent themselves in immigration proceedings.

In complement to that protection, the Board will suspend adjudication of any appeal or motion that involves an unrepresented detained respondent who has been deemed incompetent to represent himself or herself in immigration court proceedings below. This applies both to removal and bond proceedings.

Respondents deemed incompetent by an immigration judge. Effective immediately, if an attorney or paralegal identifies a case in which the respondent is detained, unrepresented, and deemed incompetent to represent himself or herself, the case should be brought to the attention of his or her Team Leader. Once the Team Leader confirms that the respondent fits this description, the Team Leader will take the following steps:

- Stop the adjudication clock in CASE, and record in the comments field: "Adjudication suspended -- representation pending."
- Forward the name and alien registration number of the respondent to Senior Legal Advisor Beth Liebmann, with a cc to Suzette Henderson.
- Complete a Quality Problem Correction Form and return the record of proceedings to the Clerk's Office.

Adjudication of the case will be suspended until such time as the respondent is represented by a qualified legal representative, either of the respondent's choice or as provided by EOIR. The Board may resume processing once a qualified legal representative has entered an appearance before the Board. The Clerk's Office will return the case to the Team Leader when it is ready for adjudication.

Respondents who appear to have competency issues. If an attorney or paralegal identifies a case in which a detained respondent is unrepresented and appears to have competency issues, the case should be brought to the attention of his or her Team Leader.

Represented respondents and non-detained respondents. Please note that these instructions do *not* apply to any case in which the respondent is represented or is not detained.

If you have any questions or require further clarification, please contact your Team Leader, Senior Panel Attorney, or Senior Legal Advisor, Beth Liebmann.

Attachments: OCIJ April 22, 2013 Memorandum

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

April 22, 2013

MEMORANDUM TO: All Immigration Judges

FROM: Brian M. O'Leary
Chief Immigration Judge

SUBJECT: Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions

For those of you who have had unrepresented detained aliens with serious mental disorders or conditions appear in your courtrooms, you are more than aware of the many unique challenges encountered in conducting removal proceedings involving such individuals. Accordingly, in order to enable Immigration Judges to more efficiently and effectively carry out their adjudicatory duties when confronted with such cases and to enhance procedural protections for mentally incompetent individuals appearing in our courts, today we are announcing, together with the Department of Homeland Security (DHS), a number of enhancements throughout the immigration removal and detention system.

Specifically, we will today begin implementation of a system that will accomplish the following:

- **Competency Hearings.** When it comes to your attention through documentation, medical records, or other evidence that an unrepresented detained alien appearing before you may have a serious mental disorder or condition that may render him or her incompetent to represent him- or herself in removal proceedings, you will conduct a competency hearing.

- **Mental Competency Examinations.** If, at the conclusion of competency hearing(s), you are unable to make a determination of whether the alien is competent to represent him- or herself in removal proceedings based on the evidence presented, you will now be able to order an independent mental competency examination and the production of a psychiatric or psychological report. EOIR will be administering a system that works with DHS to

procure such independent examinations and reports. While Immigration Judges shall retain their discretion to determine whether or not a detained alien is competent to represent him- or herself, the independent competency evaluation will serve as a useful tool in assisting with that determination.

- **Availability of Qualified Representatives.** If, at the conclusion of competency hearing(s), you find that the unrepresented detained alien is not mentally competent to represent him- or herself, and the alien does not at that point otherwise have legal representation, EOIR will make available a qualified legal representative to represent the alien in all future detained removal and/or bond proceedings.

- **Bond Hearings.** In addition, any unrepresented detained aliens who were initially identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and who have been held in detention by DHS for six months or longer will be afforded a bond hearing.

More detailed information will be provided as it becomes available. We expect these new procedures will be fully operational by the end of 2013.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

September 17, 2013

BIA 13-03

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: **CASE HOLD** – Retroactive Adoption Decrees

The Board is currently examining its holding in *Matter of Cariaga*, 15 I&N Dec. 716 (BIA 1976) (retroactive dates of decrees of adoption are not valid for immigration purposes). *See also Matter of Drigo*, 18 I&N 223 (BIA 1982). Due to recent federal court activity related to the issues in *Matter of Cariaga*, I have determined that it is appropriate to direct that the adjudication time limits be temporary suspended in cases that are impacted by the Board's holding in *Matter of Cariaga*. Accordingly, if you identify a case in which the dispositive issue involves what effect should be given to the retroactive dates of decrees of adoption for immigration purposes, please bring it to your team leader or Senior Panel Attorney.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 20530

April 22, 2014

BIA 14-01

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: UPDATE - Temporary Protected Status - Haiti

In March 2014 the Secretary of Homeland Security announced the extension of the designation of Haiti for Temporary Protected Status (TPS) for 18 months, from July 23, 2014 through January 22, 2016. *See* 79 FR 11808-11814 (March 3, 2014). As a result, Haitians who have never been granted TPS may be eligible to file a late initial application with the Department of Homeland Security (DHS). Nationals of Haiti who were granted TPS pursuant to the Secretary's prior designation are required to re-register with DHS.[1]

The Board will continue to administratively close pending removal appeals involving Haitians who appear eligible for TPS. *See* Chairman's Memorandum, Temporary Protected Status – Haiti (BIA 10-02); Chairman's Memorandum, UPDATE – Temporary Protected Status – Haiti (BIA 11-02); and Chairman's Memorandum, UPDATE – Temporary Protected Status – Haiti (BIA 13-01). Not all Haitians are eligible for TPS, so please review the record of proceedings for apparent eligibility before circulating an administrative closure order.

General eligibility requirements for TPS pursuant to the Haiti re-designation are found in the Federal Register cite listed above, sections 244(a)(1), (c) of the Immigration and Nationality Act (INA), and corresponding regulations. An alien:

- must be a national of Haiti (or an alien with no nationality who last habitually resided in Haiti) who continuously resided in the United States since January 12, 2011, and has been continuously physically present in the United States since July 23, 2011.

- must be admissible as an immigrant, except as provided in section 244(c)(2)(A) (permitting waiver of certain grounds of inadmissibility). *See also* 8 C.F.R. § 1244.3(b), (c). The grounds at

[1] The 60-day re-registration period runs from March 3, 2014, through May 2, 2014.

section 212(a)(4), (5)(A) and (B), and (7)(A)(i) should not be applied. *See* 8 C.F.R. § 1244.4(a) (referring to definitions of felony and misdemeanor).

- cannot be described in section 208(b)(2)(A) of the INA, which includes:
  - the persecutor bar
  - the particularly serious crime bar
  - the serious nonpolitical crime bar
  - the security danger bar
  - the terrorist bar
  - firm resettlement

If the alien does not appear eligible for TPS, the case may be processed pursuant to normal procedures. Please note on the circulation sheet why there is no apparent eligibility.

When administratively closing a case, use the attached order. The "TPS" decision code should be selected on the circulation sheet. Some types of cases should not be administratively closed, *e.g.*, motions to reopen and reconsider, appeals of an Immigration Judge denial of a motion, untimely appeals, and detained cases. In these cases, add a footnote advising the alien of TPS where he or she may be eligible. Each Panel may issue its own standard language for this purpose.

In addition, for your information, application registration periods for initial registration or re-registration with DHS for Haitians eligible for TPS are found in the Federal Register cites listed in this memo. Additionally, you should refer to the USCIS website at www.uscis.gov.

Please contact your Team Leader if you have questions.

Attachment

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 20530

File: A

Date:

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security both extended the existing designation of Haiti under the Temporary Protected Status (TPS) Program and re-designated Haiti for TPS. *See* 79 FR 11808-14 (March. 3, 2014). The current designation has been extended to remain in effect through July 22, 2016. It appears from the record that the alien in the case before us is from Haiti and may be eligible to register or re-register TPS. Additional information about applying for or re-registering for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

FOR THE BOARD

BIA - 14-03

Memorandum

Subject	Date
Case Hold Lifted - Persecution claim based on domestic violence	August 27, 2014

To

Board Legal Staff

From CKA for DLN

David L. Neal, Chairman

As the result of the publication of *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), the existing hold (temporary suspension of the adjudication time limits) on asylum and/or withholding of removal related cases involving victims of domestic violence is lifted. Cases that were placed in the designated cabinets are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or team leader regarding the circulation of cases with this issue.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 20530

January 21, 2015

BIA 15-01

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD – Sibling-to-sibling DNA Test

The Board is currently examining the USCIS practice, in visa petition cases, of declining to accord any weight to positive sibling-to-sibling DNA test results, no matter how probable the blood relationship. Given the broad application of this practice and the regularity with which the issue has been raised recently, the Board will temporarily suspend adjudication of visa petition cases involving sibling-to-sibling DNA tests where the test results favor the claimed sibling relationship. Accordingly, if you identify a visa petition case in which the dispositive issue involves the weight of such DNA results, please bring it to your Team Leader or Senior Panel Attorney.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 20530

April 17, 2015

BIA 15-02

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD – *Matter of Silva-Trevino*

As you are aware, the Attorney General has vacated *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) and has directed the Board to develop a uniform standard for determining whether a particular offense is a crime involving moral turpitude (CIMT). *See* 26 I&N Dec. 550 (A.G. 2015).

General Rule. Given this development, the Board will temporarily suspend adjudication of cases where the dispositive issue is whether an offense is a CIMT, subject to the exception below. This hold applies equally to cases involving section 212 and 237 charges -- and in both the removability and relief contexts. The hold includes detained and non-detained cases.

Exception. This general rule will not apply where either there is Board or federal court precedent identifying a particular offense categorically as a CIMT, or when a CIMT determination can be made based solely on the content of the statute without any divisibility-type concerns. Please note that the Attorney General has not disturbed our precedent regarding what behavior substantively constitutes a CIMT. *See* 26 I&N Dec. at 553, n. 3.

Alternate Ground. This hold applies *only* where the CIMT issue is dispositive. Each case must therefore be scrutinized to determine whether an alternate, legitimate ground for adjudication exists outside the CIMT analysis. For example, where

- Other criminal grounds of removal exist that have the same effect as the CIMT ground (*e.g*, barring relief), and those grounds are sustainable. (In this situation, you might add a footnote that we need not address the CIMT charge, as it would not change the result in this case.)

- The CIMT bars relief, but the relief has also been denied on alternative grounds which can be upheld (*e.g,* discretion).

Process. For any case that warrants a hold, the attorney must attach a brief statement for the Team Leader which explains why there is no alternative basis for adjudication. The statement should be attached to the Board Wide Holds Routing Slip.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 20530

July 9, 2015

BIA 15-03

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal DLN
Chairman

SUBJECT: LIFTED – CASE HOLD – Retroactive Adoption Decrees

As the result of the publication of *Matter of R. Huang*, 26 I&N Dec. 627 (BIA 2015), I am lifting the existing hold (temporary suspension of the adjudication time limits) on cases turning on the issue of what effect should be given to retroactive dates of decrees of adoption for immigration purposes. Cases that were placed in the designated cabinets may now be adjudicated. Further instructions regarding the circulation of cases with this issue, as necessary, will follow from your Senior Panel Attorney or Team Leader.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

September 29, 2015

BIA 15-04

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD – Cancellation of Removal and Suspension of Deportation

Section 240A(e)(1) of the Immigration and Nationality Act states that the Attorney General may not cancel the removal and adjust status nor suspend the deportation of more than 4,000 aliens in any fiscal year. EOIR has procedures in place to ensure the agency stays within the statutory cap, but is currently reviewing ways to improve and refine those procedures. Given this review and the imminent beginning of a new fiscal year, the Board will temporarily suspend adjudication of certain cases involving applications for cancellation of removal and suspension of deportation.

Which cases are subject to the HOLD?

- Non-detained case appeals or motions
- Cases involving an application for:
    - § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B), or
    - suspension of deportation (Form EOIR-40), or
    - suspension of deportation or special rule cancellation of removal (Form I-881)

What do I do if I identify a case that falls within this hold category, or I have any questions?

Please bring such cases to your Team Leader or Senior Panel Attorney. If you have any questions or require further clarification, please contact your Team Leader or Senior Panel Attorney. If you and/or your supervisor have questions about this guidance, please consult Senior Legal Advisor Amy Minton.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

October 29, 2015

BIA 15-05

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: Handling Cases Involving Certain Applications for Cancellation and Suspension

By statute, the Attorney General may not cancel the removal and adjust status nor suspend the deportation of more than 4,000 aliens in any fiscal year. *See* section 240A(e)(1) of the Immigration and Nationality Act (INA). The Board, along with the Office of the Chief Immigration Judge (OCIJ) and the Immigration Judges, is responsible for ensuring that EOIR does not exceed this statutory limitation. As part of the agency's coordinated approach to the "cancellation cap," it is important that we identify cases before the Board that fall within the scope of section 240A(e)(1) of the INA. A case that may be subject to section 240A(e)(1) will be referred to as a "CoR Cap Case."

In addition, when OCIJ and the Board have granted a designated number of the 4,000 cancellation/suspension cases in a fiscal year, the Board, like the Immigration Courts, will reserve issuance of decisions in certain CoR Cap Cases in accordance with 8 C.F.R. § 1240.21(c). The Senior Legal Advisors in conjunction with the Clerk's Office will oversee this portion of the Board's processing of CoR Cap Cases.

This memorandum provides Board legal staff with guidance on identifying and reporting a CoR Cap Case.

I. IDENTIFICATION OF CoR CAP CASES BEFORE THE BOARD

What is a CoR Cap Case?

A case in removal or deportation proceedings where the underlying relief sought by the respondent before the Immigration Judge is either:

- § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B), or
- § 244(a) suspension of deportation (Form EOIR-40).

However, if the respondent meets either exception below, then the case is *not* a CoR Cap Case:

- certain nationals of Guatemala, El Salvador, and former Soviet bloc countries as described in section 203(a)(1) of the Nicaraguan Adjustment and Central American Relief Act (NACRA) (Form I-881), or
- alien in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation pursuant to section 243(a)(3) of the INA (as effective prior to April 1, 1997).

What if case type is a motion to reopen or reconsider in removal/deportation proceedings?

If the respondent has filed a motion to reopen or motion to reconsider with the Board, assess whether or not the case is a CoR Cap Case, and complete the "CoR Cap Case?" field on the applicable circulation sheet.

What if the appealing party has filed a motion to withdraw their appeal?

Regardless of whether an appealing party in removal/deportation proceedings advises the Board that they wish to withdraw their appeal, assess whether or not the case is a CoR Cap Case.

What if the respondent is in bond or custody proceedings?

Bond and custody proceedings are separate and apart from removal or deportation proceedings, so cancellation cap procedures do not apply. The CoR Cap Case field is not listed on the circulation sheets used for bond or custody proceeding.

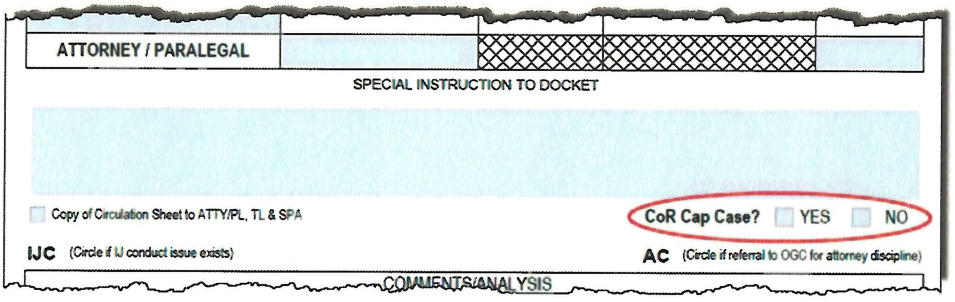
What if the CoR Cap Case also has an application relief other than EOIR-42B or EOIR-40?

If the case meets the CoR Cap Case definition above, the case must be identified and treated as such, even if the respondent is seeking another form of relief. Please see section III of this memorandum.

II. CIRCULATION SHEET –

A. "CoR Cap Case" Field

When completing a circulation sheet, *always* mark whether the case being circulated is a CoR Cap Case. *See* image below. This is required for every circulation sheet. If this field is not completed when the case is circulated or re-circulated, the case will be returned to the circulating attorney or paralegal.



Use only the fillable circulation sheets posted on the BIA Webpage. The CoR Cap Case field is listed on circulation sheets requiring completion of this field. There are, however, a few circulation sheets that do not require a CoR Cap Case field (i.e., Attorney Discipline Case, Bond Case, Civil Detention Bond Case, Visa Petition, Recognition and Accreditation).

Do I need to complete a new circulation sheet if I am recirculating a CoR Cap Case?

Yes. Be sure to use a fillable circulation sheets available on the BIA Webpage.

What if only the lead (or a rider) is a CoR Cap Case?

If any of the respondents associated with the decision meets the definition of a CoR Cap Case, then mark "yes" on the circulation sheet and indicate which respondent falls within the CoR Cap Case definition in the SPECIAL INSTRUCTIONS TO DOCKET field of the circulation sheet.

B. Decision Codes

Our circulation sheets have also been revised to record when the Board's decision results in a grant of a CoR Cap Case or overturns an Immigration Judge's grant of relief. Specifically, Group III of the Decision Codes shall apply as follows:

CFG = Board decision results in a final grant of a CoR Cap Case (certain EOIR-42B and EOIR-40 applications)

CFD = Board overturns IJ grant of CoR Cap Case, no remand (certain EOIR-42B and EOIR-40 applications)

When should the CFG decision code be used instead of a BCR?

If the Board's decision is granting or affirming an Immigration Judge's grant of § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B) or § 244(a) suspension of deportation (Form EOIR-40), you must determine whether (1) DHS reported the results of background and security checks to the judge, and (2) are those checks "current" (i.e., reported expiration date has not elapsed). This step is *vital* to the proper adjudication of these cases.

Detained alien. Check the record of proceedings to confirm that DHS has reported checks to the Immigration Judge and determine whether those checks or current or have expired.

CFG = If the checks are current, then the Board does not need to Background Check Remand (BCR). The Board's decision, however, *must* meet certain requirements. Follow the procedures outlined in Chairman's Memorandum BIA 12-03.

BCR = If the record reveals that DHS did not report checks or previously reported checks have expired.

Nondetained alien. If the respondent is not detained, the previously reported checks are unlikely to be current. Check the record of proceedings to determine whether checks are current or have been updated by DHS.

When should the DIS decision code be used?

DIS = Board's decision dismisses an appeal from an Immigration Judge denial of § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B) or § 244(a) suspension of deportation (Form EOIR-40).

III. CONCURRENT APPLICATIONS FOR RELIEF

Whether or not the cancellation cap has been reached in the current fiscal year, the Board is required to adjudicate concurrently all other forms of relief for which a respondent has applied. *See* 8 C.F.R. § 1240.21(c)(2). The regulations provide that, if an application for asylum or adjustment of status is granted, the respondent's application for suspension or cancellation shall be denied in the exercise of discretion. Also, if the Board sustains a DHS appeal of an Immigration Judge's decision granting asylum or adjustment of status, the decision to deny suspension or cancellation in the exercise of discretion per this provision shall be reconsidered. *Id.*

If assigned a CoR Cap Case that has a concurrent application for relief, please consult your supervisor for guidance.

IV. CONCLUSION

It is important that we identify cases before the Board that are CoR Cap Cases (fall within the scope of section 240A(e)(1) of the INA). If you have a case involving these issues and you are unsure how to

proceed, please consult your supervisor or another appropriate attorney manager. Additionally, if you have any questions concerning this memorandum, please contact Senior Legal Advisor Amy Minton at (703) 605-0317.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

October 29, 2015

BIA 15-06

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD LIFTED – Cancellation of Removal and Suspension of Deportation

As a result of the guidance announced in Chairman's Memorandum BIA 15-05, I am lifting the existing hold (temporary suspension of the adjudication time limits) on certain cases involving applications for cancellation of removal and suspension of deportation.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

March 29, 2016

BIA 16-01

MEMORANDUM TO: Board Legal staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD LIFTED – Sibling-to-sibling DNA Test

As the result of the publication of *Matter of Ruzku*, 26 I&N Dec. 731 (BIA 2016), the existing hold (temporary suspension of the adjudication time limits) on visa petitions involving sibling-to-sibling DNA tests is lifted. Cases that were placed on hold are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or team leader regarding the circulation of cases with this issue.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

September 28, 2016

BIA 16-02

MEMORANDUM TO: Board Legal staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD LIFTED – *Matter of Chairez and Sama*

As the result of the publication of *Matter of Chairez*, 26 I&N Dec. 819 (BIA 2016), the existing hold (temporary suspension of the adjudication time limits) where the divisibility of a criminal statute is the dispositive issue is lifted. However, at this time, the *Matter of Silva-Trevino* case hold remains in effect (dispositive issue is whether an offense is a crime involving moral turpitude as directed in Chairman's Memo BIA 15-02).

Cases that were placed on hold pursuant to the *Matter of Chairez and Sama* are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or team leader regarding the circulation of cases with this issue.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

October 12, 2016

BIA 16-03

MEMORANDUM TO: Board Legal staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD LIFTED – *Matter of Silva-Trevino*

As the result of the publication of *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016), I am lifting the existing hold (temporary suspension of the adjudication time limits) on certain cases where a particular offense is a crime involving moral turpitude (CIMT) was the dispositive issue.

Cases that were placed on hold pursuant to the *Matter of Silva-Trevino* are in the process of being returned for adjudication. Further instructions will be forthcoming from your Senior Panel Attorney or team leader regarding the circulation of cases with this issue.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

May 31, 2017

BIA 17-01

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal, Chairman

SUBJECT: Electronic File Naming Conventions

The purpose of this memorandum is to update our process for naming the files that contain our electronic decisions. This memorandum supersedes any previously issued directives on this topic.

The number of electronic files currently in our data library is voluminous and growing. Given the size of our past and present docket, we have over 1.8 million electronic decisions, all shared across the network folders of our entire legal and administrative staff. Not surprisingly, file location is becoming a significant issue, and finding a particular electronic decision is increasingly difficult. Administrative staff, Board Members, and other legal staff too often struggle to navigate electronic folders and locate specific files that are elusive because of an author's individualized naming conventions.

This memorandum therefore institutes a standardized naming convention that will provide us needed consistency but still allow sufficient personalization of legal staff's network folders.

This new naming convention is mandatory. It will take effect on July 1, 2017, and will apply to decisions drafted or revised on or after that date. Staff is welcome but not required to rename older files to conform to the new standard.

If you have any questions about the new naming convention, please see your Team Leader, Senior Panel Attorney, Director of Operations Jake Walker, or Senior Legal Advisor Amy Minton.

I. DRIVES AND FOLDERS

1. **Network drives.** – While the Board has multiple network drives (indicated by a letter followed by a colon), electronic decisions are *not* to be saved on your C: or H: drives. Documents on your C: or H: drive are inaccessible to other staff. In addition, files stored on the C: drive are not "backed up" and will be lost if the file, software, or computer is damaged or lost.

2. **Electronic File Folders.** –

   a. ***Team folders.*** – All electronic copies of Board decisions belong in the folder bearing the name of the drafting attorney or paralegal. Those folders are located within each person's Team folder.

   b. ***Subject subfolders.*** – Attorneys and paralegals may elect to utilize subfolders to organize and maintain electronic decisions. Subfolders should correspond to general subject areas normally addressed by the Board. Commonly used short form names or abbreviations will make your subfolders easier for others to find and navigate. Below is a list of general subject areas and corresponding subfolder names (short name or abbrev.) that are commonly used when a new attorney or paralegal folder is created. The use of these names is highly recommended.

SUBJECT FILE ORGANIZATION		
Subject	**Subfolder Short Name**	**Subfolder Abbrev.**
Abandonment of LPR Status	Abandon	ABND
Adjustment of Status	Adjustment	ADJ
Asylum and Withholding	Asylum	ASY
Bond	Bond	BOND
Cancellation of Removal	Cancellation	COR
Citizenship	Citizen	CIT
Constitutional Rights	Constitutional	CON
Convention Against Torture	CAT	CAT
Criminal Aliens	Criminal	CRIM
Evidence and Procedure	Evidence	EVID
In Absentia	In Absentia	INAB
Motions	Motions	MTN
Removability	Removability	RMV
Visa Petitions	Visa Petitions	VISA
Voluntary Departure	Voluntary Departure	VD
Waivers	Waivers	WVR

Attorneys and paralegals may add other subject folders and subfolders. However, electronic decisions may *not* be placed in temporary or transitory folders (e.g., folders named "circulating orders"), given the risk that those decisions will not subsequently be moved to a location where the files can be found. Also, when naming folders and subfolders, names should be kept short and have labels that are easily identified by others. Similarly, these folders and subfolders are part of the file path that is used when completing the circulation sheet, and it is important that the file path be completely and accurately identified on the circulation sheet. See Section III Circulation Sheets.

II. FILE NAMING CONVENTION

1. **Required information.** – Any electronic decision must have a file name with standard descriptive elements in the order of appearance as listed below.

1. Alien number	-	required
2. Alien/beneficiary	-	required
3. Rider alien number	-	required *if* consolidated with lead[1]
4. Separate opinion	-	required *if* applicable
5. Version	-	required *if* more than one version is saved
6. Drafter's initials	-	required
7. Editor's initials	-	required *if* applicable

Examples:

New file	-	012345678 XENOS amm
Newer version	-	012345678 XENOS v2 amm
Rider (consolidated)	-	012345678 XENOS (679) amm
Separate opinion	-	012345678 XENOS (dissent) amm
Edited order	-	012345678 XENOS amm dbh
Edited order (multiple)	-	012345678 XENOS amm dbh hm dbh

a. ***"A" Number.*** – The file names for electronic decisions must always begin with the alien registration number (A number). Do *not* start the file name with the letter "A." *Do* start the file name with the number "0" when the A number is eight digits long, instead of nine. The A# number should always be nine consecutive numbers without dashes, spaces, or underscore.

Example: 012345678 XENOS amm

b. ***Alien/beneficiary last name.*** – Use only the alien/beneficiary last name as identified in the charging document or visa petition, which in turn should match the name in the charging document or visa petition. (If the name appearing in the charging document or visa petition does not match what appears in CASE, bring the discrepancy to the attention of a Team Leader.) Do not include aliases, even if they

[1] Where a separate electronic decision is drafted for the rider alien, then the file name for that decision will start with the rider's alien number.

appear in the charging document or visa petition. Do not shorten names unless they are exceedingly long.

Examples: 012345678 XENOS v2 amm hm

012345678 XENOS (dissent) amm

c. ***Alien Number Rider(s)***. – If there is more than one alien and the decision is identical for both the lead and rider, there is no need to include the rider A number in the file name. However, if you elect to include rider A numbers in the file name, they should be identified by the last three digits of the rider's A number (whether or not the files are numbered sequentially) and inside the parentheses (in the same way as a separate opinion is identified). However, if there is a rider that requires a different decision, then that electronic decision will be identified by a separate filename starting with the rider's A number, not the lead A number.

Examples: 012345678 XENOS amm

012345678 XENOS (680 691) amm

d. ***Separate opinion***. – When the proposed decision is a separate opinion, the file name must reflect that.

Example: 012345678 XENOS (concur) amm

e. ***Version***. – If multiple versions of a decision are saved, then the file name should include the version number to allow editors to distinguish between versions. Use the letter "v" and a number to indicate the version number. Do not include a period (e.g., "v" not "v.").

Minor edits to a proposed decision do *not* merit saving a new version. Rather, a new "version" should be significantly different from the prior version (e.g., there have been significant substantive changes in the content of the decision; there are enough minor changes that it makes sense to retain the prior decision).

Examples: 012345678 XENOS v1 amm

f. ***Drafter's initials***. – The original author of the proposed decision must include his or her initials (lower case) in the file name.

Example: 012345678 XENOS amm

g. ***Editor's initials***. – Editors must add their initials and update the version number, if appropriate, before saving the edited version in the original drafter's folder.[2] Editors should use the "save as" function in Word in order to preserve the prior version. The last initials should always be last person who altered the decision. Also, to preserve the editing history, no initials should ever be deleted.

Examples: last edited by legal assistant 012345678 XENOS amm hm

last edited by Board Member 012345678 XENOS amm hm npm

The circulation sheet must also be updated to reflect that editor's initials.

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[2] An "editor" is any person, other than the original drafter, who edits the proposed decision, be it a Board Member, a legal assistant, or another staff member authorized to revise the decision or input edits.

h. ***Separators.*** – To separate file name elements, use a space, *not* dots/periods (.), underscores (_), or dashes (-) to represent a space between file name elements.

Example: 012345678 XENOS amm

Not: 012345678.XENOS.amm, or

012345678_XENOS_amm, or

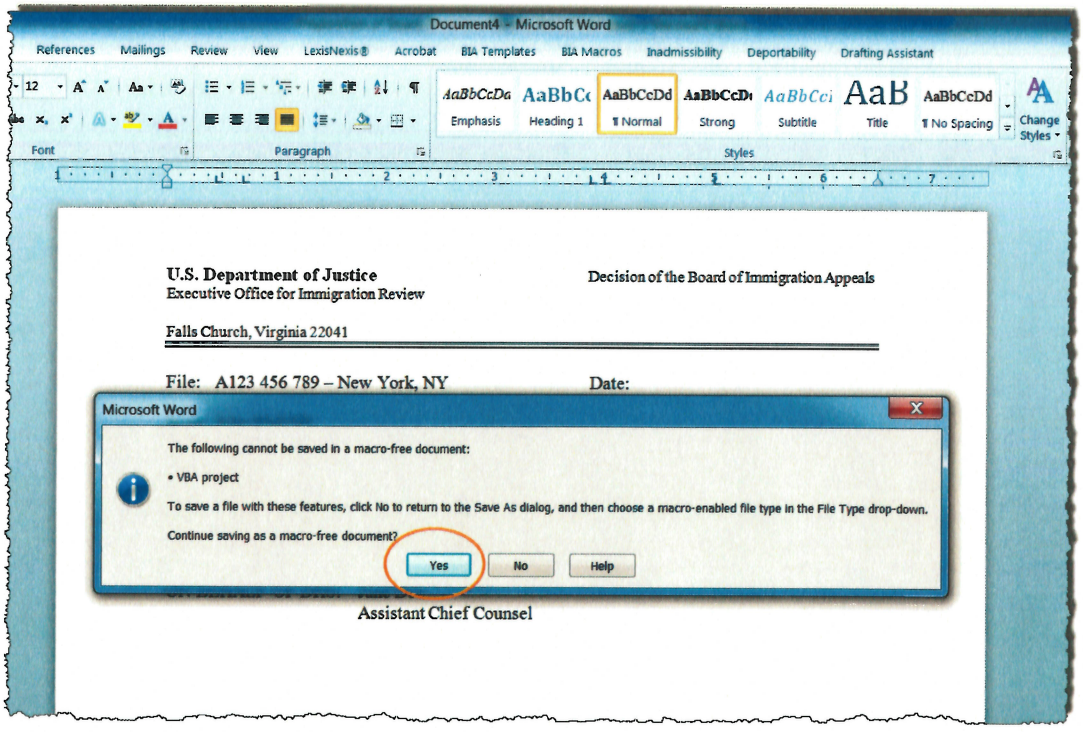
012345678-XENOS-amm

i. ***Additional information.*** – Once the required elements are listed (and in the right order), additional information may be added (e.g., issue, country, key words). If additional information is included, use spaces as a separator, not a period, underscore, or dash. As a practice, try to keep additional information succinct. Avoid special characters -- such as: "?" "/" "$" "%" "&" "#" "." "\" ":" "<" ">" -- since many of these characters will not work in file names and they may complicate future file search capabilities. Also, additional information should always follow all other information

Examples: 012345678 XENOS amm mtr for approved I-130

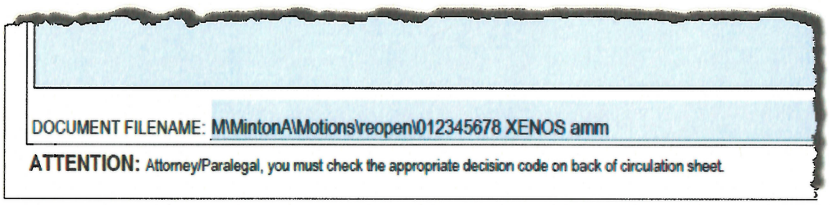
012345678 XENOS v03 amm hm npm sec 212(c) 10thCir

j. ***File extension.*** – Do not add ".docx" at end of a file name because this is the default setting in Word and will automatically be included in the file name by Word. Also, do not use the file extension ".docm" since this extension will prevent the contents of the file to be searched. As a result, when using the BIA templates and first saving the electronic decision, make sure to change the file type to ".docx" and select "Yes" when the dialogue box below appears on the screen, as seen in the illustration below. This action will enable the document to be saved as a ".docx" file.



III. CIRCULATION SHEETS

In the designated space for the DOCUMENT FILENAME on the circulation sheet, please be sure to provide *all* the information necessary to find the file. The illustration below is an example of a completed DOCUMENT FILENAME.



The circulation sheet should indicate (i) the file path – that is, the Team folder, the author's folder name, and the author's subfolder name – and (ii) the file name with *all* of the required elements. (There is no need to identify the drive.)

Examples: M\MintonA\Asy\012345678 XENOS v2 amm

M\mintona\motions\reopen\012345678 XENOS (dissent) amm

1. ***File path***. – The file path describes the location of the proposed decision in the attorney's or paralegal's Team folder on the network. The specific network drive (G or I) does not need to be included. Rather, the following file path (location) information must be included:

    1. the Team initial(s)

    2. the author's folder name

    3. the author's subfolder name, if applicable

    Example of file path: M\MintonA\Motions\Reopen\012345678 XENOS amm

    Not: G:\M\MintonA\Motions\Reopen\012345678 XENOS amm

2. ***File name***. – The circulation sheet should have *only* the required elements of the file name, *not* the additional descriptive information used by an attorney or paralegal.

3. ***Separators***. – Use a backslash ("\") to separate the elements of the file path and the file name.

4. ***Editor update***. – If an edited draft is circulated, the circulation sheet must include the editor's initials in the file name.

5. ***File extension***. – Do not include file extension ".docx."

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

June 5, 2017

BIA 17-03

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal, Chairman

SUBJECT: Electronic File Naming Conventions

The purpose of this memorandum is to update our process for naming the files that contain our electronic decisions. This memorandum supersedes any previously issued directives on this topic.

The number of electronic files currently in our data library is voluminous and growing. Given the size of our past and present docket, we have over 1.8 million electronic decisions, all shared across the network folders of our entire legal and administrative staff. Not surprisingly, file location is becoming a significant issue, and finding a particular electronic decision is increasingly difficult. Administrative staff, Board Members, and other legal staff too often struggle to navigate electronic folders and locate specific files that are elusive because of an author's individualized naming conventions.

This memorandum therefore institutes a standardized naming convention that will provide us needed consistency but still allow sufficient personalization of legal staff's network folders.

This new naming convention is mandatory. It will take effect on July 1, 2017, and will apply to decisions drafted or revised on or after that date. Staff is welcome but not required to rename older files to conform to the new standard.

If you have any questions about the new naming convention, please see your Team Leader, Senior Panel Attorney, Director of Operations Jake Walker, or Senior Legal Advisor Amy Minton.

I. DRIVES AND FOLDERS

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2. **Electronic File Folders.** –

   a. ***Team folders.*** – All electronic copies of Board decisions belong in the folder bearing the name of the drafting attorney or paralegal. Those folders are located within each person's Team folder.

   b. ***Subject subfolders.*** – Attorneys and paralegals may elect to utilize subfolders to organize and maintain electronic decisions. Subfolders should correspond to general subject areas normally addressed by the Board. Commonly used short form names or abbreviations will make your subfolders easier for others to find and navigate. Below is a list of general subject areas and corresponding subfolder names (short name or abbrev.) that are commonly used when a new attorney or paralegal folder is created. For that reason, the use of these folder names and abbreviations are highly recommended, but other easily recognizable folder names or abbreviations are also acceptable.

SUBJECT FILE ORGANIZATION		
Subject	**Subfolder Short Name**	**Subfolder Abbrev.**
Abandonment of LPR Status	Abandon	ABND
Adjustment of Status	Adjustment	ADJ
Asylum and Withholding	Asylum	ASY
Bond	Bond	BOND
Cancellation of Removal	Cancellation	COR
Citizenship	Citizen	CIT
Constitutional Rights	Constitutional	CONST
Convention Against Torture	CAT	CAT
Criminal Aliens	Criminal	CRIM
Evidence and Procedure	Evidence	EVID
In Absentia	In Absentia	INAB
Motions	Motions	MTN
Removability	Removability	RMV
Visa Petitions	Visa Petitions	VISA
Voluntary Departure	Voluntary Departure	VD
Waivers	Waivers	WVR

Attorneys and paralegals may add other subject folders and subfolders. However, electronic decisions may *not* be placed in temporary or transitory folders (e.g., folders named "circulating orders"), given the risk that those decisions will not subsequently be moved to a location where the files can be found. Also, when naming folders and subfolders, names should be kept short and have labels that are easily identified by others. Similarly, these folders and subfolders are part of the file path that is used when completing the circulation sheet, and it is important that the file path be completely and accurately identified on the circulation sheet. See Section III Circulation Sheets.

II. FILE NAMING CONVENTION

1. **Required information.** – Any electronic decision must have a file name with standard descriptive elements in the order of appearance as listed below.

1. Alien number	-	required[1]
2. Alien/beneficiary	-	required
3. Separate opinion	-	required *if* applicable
4. Version	-	required *if* more than one version is saved
5. Drafter's initials	-	required
6. Editor's initials	-	required *if* applicable

Examples:

New file	-	012345678 XENOS amm
Newer version	-	012345678 XENOS v2 amm
Separate opinion	-	012345678 XENOS (dissent) amm
Edited order	-	012345678 XENOS amm dbh
Edited order (multiple)	-	012345678 XENOS amm dbh hm dbh

a. ***"A" Number.*** – The file names for electronic decisions must always begin with the alien registration number (A number). Do *not* start the file name with the letter "A." *Do* start the file name with the number "0" when the A number is eight digits long, instead of nine. The A# number should always be nine consecutive numbers without dashes, spaces, or underscore.

Example: 012345678 XENOS amm

If there is more than one alien and the decision is identical for both the lead and rider, there is no need to include the rider A number in the file name. However, if you elect to include the rider A numbers in the file name, they should be identified by the last three digits of the rider's A number (whether or not the files are number sequentially) and inside the parentheses (in the same way as a separate opinion is identified). However, as noted above, if there is a rider that requires a different decision, then that electronic decision will be identified by a separate filename starting with the rider's A number, not the lead A number.

Examples: 012345678 XENOS amm

012345678 XENOS (680 691) amm

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[1] Where a separate electronic decision is drafted for a rider alien, then the file name for that decision will start with the rider's alien number.

b. ***Alien/beneficiary last name.*** – Use only the alien/beneficiary last name as identified in the charging document or visa petition, which in turn should match the name in the charging document or visa petition. (If the name appearing in the charging document or visa petition does not match what appears in CASE, bring the discrepancy to the attention of a Team Leader.) Do not include aliases, even if they appear in the charging document or visa petition. Do not shorten names unless they are exceedingly long.

Examples: 012345678 XENOS v2 amm hm

012345678 XENOS (dissent) amm

c. ***Alien Number Rider(s).*** – If there is more than one alien and the decision is identical for both the lead and rider, there is no need to include the rider A number in the file name. However, if you elect to include rider A numbers in the file name, they should be identified by the last three digits of the rider's A number (whether or not the files are numbered sequentially) and inside the parentheses (in the same way as a separate opinion is identified). However, if there is a rider that requires a different decision, then that electronic decision will be identified by a separate filename starting with the rider's A number, not the lead A number.

Examples: 012345678 XENOS amm

012345678 XENOS (680 691) amm

d. ***Separate opinion.*** – When the proposed decision is a separate opinion, the file name must reflect that.

Example: 012345678 XENOS (concur) amm

e. ***Version.*** – If multiple versions of a decision are saved, then the file name should include the version number to allow editors to distinguish between versions. Use the letter "v" and a number to indicate the version number. Do not include a period (e.g., "v" not "v.").

Minor edits to a proposed decision do *not* merit saving a new version. Rather, a new "version" should be significantly different from the prior version (e.g., there have been significant substantive changes in the content of the decision; there are enough minor changes that it makes sense to retain the prior decision).

Examples: 012345678 XENOS v1 amm

f. ***Drafter's initials.*** – The original author of the proposed decision must include his or her initials (lower case) in the file name.

Example: 012345678 XENOS amm

g. ***Editor's initials.*** – Editors must add their initials and update the version number, if appropriate, before saving the edited version in the original drafter's folder.[2] Editors should use the "save as" function in

[2] An "editor" is any person, other than the original drafter, who edits the proposed decision, be it a Board Member, a legal assistant, or another staff member authorized to revise the decision or input edits.

Word in order to preserve the prior version. The last initials should always be last person who altered the decision. Also, to preserve the editing history, no initials should ever be deleted.

Examples: last edited by legal assistant 012345678 XENOS amm hm

last edited by Board Member 012345678 XENOS amm hm npm

The circulation sheet must also be updated to reflect that editor's initials.

h. ***Separators***. – To separate file name elements, use a space, *not* dots/periods (.), underscores (_), or dashes (-) to represent a space between file name elements.

Example: 012345678 XENOS amm

Not: 012345678.XENOS.amm, or

012345678_XENOS_amm, or

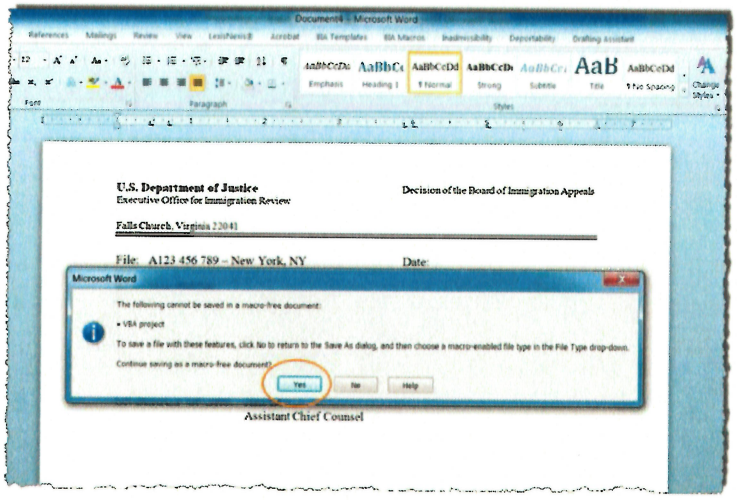
012345678-XENOS-amm

i. ***Additional information***. – Once the required elements are listed (and in the right order), additional information may be added (e.g., issue, country, key words). If additional information is included, use spaces as a separator, not a period, underscore, or dash. As a practice, try to keep additional information succinct. Avoid special characters -- such as: "?" "/" "$" "%" "&" "#" "." "\" ":" "<" ">" -- since many of these characters will not work in file names and they may complicate future file search capabilities. Also, additional information should always follow all other information

Examples: 012345678 XENOS amm mtr for approved I-130

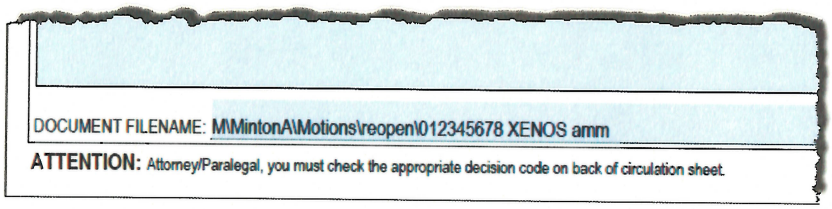
012345678 XENOS v03 amm hm npm sec 212(c) 10thCir

j. ***File extension***. – Do not add ".docx" at end of a file name because this is the default setting in Word and will automatically be included in the file name by Word. Also, do not use the file extension ".docm" since this extension will prevent the contents of the file to be searched. As a result, when using the BIA templates and first saving the electronic decision, make sure to change the file type to ".docx" and select "Yes" when the dialogue box below appears on the screen, as seen in the illustration below. This action will enable the document to be saved as a ".docx" file.



III. CIRCULATION SHEETS

In the designated space for the DOCUMENT FILENAME on the circulation sheet, please be sure to provide *all* the information necessary to find the file. The illustration below is an example of a completed DOCUMENT FILENAME.



The circulation sheet should indicate (i) the file path – that is, the Team folder, the author's folder name, and the author's subfolder name – and (ii) the file name with *all* of the required elements. (There is no need to identify the drive.)

Examples: M\MintonA\Asy\012345678 XENOS v2 amm

M\mintona\motions\reopen\012345678 XENOS (dissent) amm

1. ***File path.*** – The file path describes the location of the proposed decision in the attorney's or paralegal's Team folder on the network. The specific network drive (G or I) does not need to be included. Rather, the following file path (location) information must be included:

    1. the Team initial(s)

    2. the author's folder name

    3. the author's subfolder name, if applicable

    Example of file path: M\MintonA\Motions\Reopen\012345678 XENOS amm

    Not: G:\M\MintonA\Motions\Reopen\012345678 XENOS amm

2. ***File name.*** – The circulation sheet should have *only* the required elements of the file name, *not* the additional descriptive information used by an attorney or paralegal.

3. ***Separators.*** – Use a backslash ("\") to separate the elements of the file path and the file name.

4. ***Editor update.*** – If an edited draft is circulated, the circulation sheet must include the editor's initials in the file name.

5. ***File extension.*** – Do not include file extension ".docx."

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

June 29, 2017

BIA 17-04

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: UPDATE – DHS Deferred Action Process for Young People

On June 15, 2017, the Secretary of the Department of Homeland Security announced the rescission of DHS' November 20, 2014, memorandum that created the program known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). The Secretary also announced that the rescission of DAPA would not affect the terms of DHS' June 15, 2012, memorandum that created the Deferred Action for Childhood Arrivals (DACA) program.

In the past, the Board elected to include in our decisions a footnote recognizing that a respondent may be eligible to seek deferred action through DACA with DHS. *See* BIA 12-05 UPDATE – DHS Deferred Action Process for Young People. However, although DHS has not at this time terminated the DACA program, this memorandum serves to rescind the guidance contained in BIA 12-05 regarding inclusion of a footnote referring to possible DACA eligibility.

If you have any questions or require further clarification, please consult your team leader, Senior Panel Attorney, or Senior Legal Advisor Amy Minton.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

June 29, 2017

BIA 17-05

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: Administrative Closure of cases involving TPS or DED countries

The purpose of this memorandum is to provide updated guidance regarding administrative closure of pending appeals at the Board involving aliens who are potentially eligible for Temporary Protected Status (TPS) or Deferred Enforced Departure (DED). This memorandum supersedes any previously issued directives on TPS or DED.

The Board will not administrative close groups of cases involving nationals who appear eligible for TPS or DED. Rather the issue of administrative closure of a case appeal pending at the Board will be made on a case-by-case basis upon evaluation of the request for administrative closure pursuant to our holdings in *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017) and *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).

Information as to countries designated for TPS or DED is available on EOIR's Virtual Law Library.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

March 12, 2018

BIA 18-01

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD – *Matter of Castro-Tum*

As you are aware, the Attorney General recently referred to himself *Matter of Castro-Tum*, 27 I&N Dec. 187 (A.G. 2018) in order to review issues relating to the authority to administratively close immigration proceedings.

The Director has instructed the Board to defer adjudication of interlocutory appeals which depend, in whole or in part, on whether administrative closure is warranted or available. 8 C.F.R. § 1003.0(b)(1)(ii). Accordingly, effective immediately, interlocutory appeals that cannot be adjudicated without resolution of an administrative closure issue will be temporarily suspended.

For any interlocutory appeal that may fall within this description, the attorney must provide a brief statement for his or her supervisor that explains why administrative closure is either dispositive or essential to that appeal's adjudication. Such statement should be attached to the Board Wide Holds Routing Slip.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

May 23, 2018

BIA 18-02

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD – *Matter of Castro-Tum*

As the result of the publication of *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), the Board is no longer required to defer adjudication of interlocutory appeals which depended, in whole or in part, on whether administrative closure was warranted or available. 8 C.F.R. § 1003.0(b)(1)(ii).

Cases that were placed on hold pursuant to the *Matter of Castro-Tum* hold are in the process of being returned for adjudication. If you have questions regarding the circulation of cases with this issue, please see your Senior Panel Attorney or team leader.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

June 29, 2018

BIA 18-03

MEMORANDUM TO: Board Legal Staff

FROM: David L. Neal
Chairman

SUBJECT: CASE HOLD LIFTED – *Negusie v. Holder*

As the result of the publication of *Matter of Negusie*, 27 I&N Dec. 347 (BIA 2018), I am lifting the existing hold (temporary suspension of adjudication time limits) on certain cases involving the persecutor bar; specifically, whether an involuntariness or duress exception exists to limit application of the bar.

Cases that were placed on hold pursuant to the *Negusie* hold are in the process of being returned for adjudication. If you have questions regarding the circulation of cases with this issue, please see your Senior Panel Attorney or team leader.